



- (2) All other words and expressions used but not defined in these regulations, but defined in the Act or the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996 and/or the rules and regulations made thereunder shall have the same meaning as respectively assigned to them in such Acts or rules or regulations or any statutory modification or re-enactment thereto, as the case may be.

### **Applicability of the regulations [Regulation 3]**

Unless otherwise provided, these regulations shall apply to the following:

- (a) a public issue;
- (b) a rights issue, where the aggregate value of specified securities offered is fifty lakh rupees or more;
- (c) a preferential issue;
- (d) an issue of bonus shares by a listed issuer;
- (e) a qualified institutions placement by a listed issuer;
- (f) an issue of Indian Depository Receipts:

Provided that the provisions of these regulations shall not apply to issue of securities under clauses (b), (d) and (e) of sub-regulation (1) of regulation 9 of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

### **COMMON CONDITIONS FOR PUBLIC ISSUES AND RIGHTS ISSUES**

#### **General conditions [Regulation 4]**

- (1) Any issuer offering specified securities through a public issue or rights issue shall satisfy the conditions of this Chapter at the time of filing draft offer document with the Board (unless stated otherwise in this Chapter) and at the time of registering or filing the final offer document with the Registrar of Companies or designated stock exchange, as the case may be.
- (2) No issuer shall make a public issue or rights issue of specified securities:
  - (a) if the issuer, any of its promoters, promoter group or directors or persons in control of the issuer are debarred from accessing the capital market by the Board;
  - (b) if any of the promoters, directors or persons in control of the issuer was or also is a promoter, director or person in control of any other company which is debarred from a made by the Board;
  - (c) if the issuer of convertible debt instruments is in the list of willful defaulters published by the Reserve Bank of India or it is in default of payment of interest or repayment of principal amount in respect of debt instruments issued by it to the public, if any, for a period of more than six months;
  - (d) unless it has made an application to one or more recognized stock exchanges for listing of specified securities on such stock exchanges and has chosen one of them as the designated stock exchange:

**Provided** that in case of an initial public offer, the issuer shall make an application for listing of the specified securities in at least one recognized stock exchange having nationwide trading terminals;
  - (e) unless it has entered into an agreement with a depository for dematerialization of specified securities already issued or proposed to be issued;
  - (f) unless all existing partly paid-up equity shares of the issuer have either been fully paid up or forfeited;

- (g) unless firm arrangements of finance through verifiable means towards seventy five per cent of the stated means of finance, excluding the amount to be raised through the proposed public issue or rights issue or through existing identifiable internal accruals, have been made.
- (3) Warrants may be issued along with public issue or rights issue of specified securities subject to the following:
  - (a) the tenure of such warrants shall not exceed twelve months from their date of allotment in the public / rights issue;
  - (b) not more than one warrant shall be attached to one specified security.
- (4) The amount for general corporate purposes, as mentioned in objects of the issue in the draft offer document filed with the Board, shall not exceed twenty five per cent of the amount raised by the issuer by issuance of specified securities.

#### **Appointment of merchant banker and other intermediaries [Regulation 5]**

- (1) The issuer shall appoint one or more merchant bankers, at least one of whom shall be a lead merchant banker and shall also appoint other intermediaries, in consultation with the lead merchant banker, to carry out the obligations relating to the issue.
- (2) The issuer shall, in consultation with the lead merchant banker, appoint only those intermediaries which are registered with the Board.
- (3) Where the issue is managed by more than one merchant banker, the rights, obligations and responsibilities, relating inter alia to disclosures, allotment, refund and underwriting obligations, if any, of each merchant banker shall be predetermined and disclosed in the offer document as specified in Schedule I.

**Provided** that where any of the merchant bankers is an associate of the issuer, it shall declare itself as a marketing lead manager and its role shall be limited to marketing of the issue.

- (4) The lead merchant banker shall, only after independently assessing the capability of other intermediaries to carry out their obligations, advise the issuer on their appointment.
- (5) The issuer shall enter into an agreement with the lead merchant banker in the format specified in Schedule II and with other intermediaries as required under the respective regulations applicable to the intermediary concerned:

**Provided** that such agreements may include such other clauses as the issuer and the intermediary may deem fit without diminishing or limiting in any way the liabilities and obligations of the merchant bankers, other intermediaries and the issuer under the Act, the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996 and the rules and regulations made thereunder or any statutory modification or statutory enactment thereof:

**Provided** further that in case of ASBA process, the issuer shall take cognizance of the deemed agreement of the issuer with Self Certified Syndicate Banks.

- (6) An issuer shall, in case of an issue made through the book building process, appoint syndicate members and in the case of any other issue, appoint bankers to issue, at all mandatory collection centres as specified in Schedule III and such other collection centres as it may deem fit.
- (7) The issuer shall appoint a registrar which has connectivity with all the depositories:

**Provided** that if issuer itself is a registrar to an issue registered with the Board, then another registrar to an issue shall be appointed as registrar to the issue:

**Provided** further that the lead merchant banker shall not act as a registrar to the issue in which it is also handling the post issue responsibilities.

**Explanation.-** or the purpose of this regulation, in case of a book built issue, the lead merchant banker appointed by the issuer shall act as the lead book runner.

### **Filing of offer document [Regulation 6]**

- (1) No issuer shall make,
  - (a) a public issue; or
  - (b) a rights issue, where the aggregate value of the specified securities offered is fifty lakh rupees or more,unless a draft offer document, along with fees as specified in Schedule IV, has been filed with the Board through the lead merchant banker, at least thirty days prior to registering the prospectus, red herring prospectus or shelf prospectus with the Registrar of Companies or filing the letter of offer with the designated stock exchange, as the case may be.
- (2) The Board may specify changes or issue observations, if any, on the draft offer document within thirty days from the later of the following dates:
  - (a) the date of receipt of the draft offer document under sub-regulation (1); or
  - (b) the date of receipt of satisfactory reply from the lead merchant bankers, where the Board has sought any clarification or additional information from them; or
  - (c) the date of receipt of clarification or information from any regulator or agency, where the Board has sought any clarification or information from such regulator or agency; or
  - (d) the date of receipt of a copy of in-principle approval letter issued by the recognised stock exchanges.
- (3) If the Board specifies changes or issues observations on the draft offer document, the issuer and lead merchant banker shall carry out such changes in the draft offer document and comply with the observations issued by the Board before registering the prospectus, red herring prospectus or shelf prospectus, as the case may be, with the Registrar of Companies or filing the letter of offer with the designated stock exchange.
- (4) The issuer shall, simultaneously while registering the prospectus, red herring prospectus or shelf prospectus with the Registrar of Companies or filing the letter of offer with the designated stock exchange or before the opening of the issue, file a copy thereof with the Board through the lead merchant banker.
- (5) The lead merchant banker shall, while filing the offer document with the Board in terms of sub-regulation (1) and sub-regulation (4), file a copy of such document with the recognized stock exchanges where the specified securities are proposed to be listed.
- (6) The offer document file with the Board under this regulation shall also be furnished to the Board in a soft copy in the manner specified in Schedule V.

### **In-principle approval from recognized stock exchanges [Regulation 7]**

The issuer shall obtain in-principle approval from recognized stock exchanges as follows:

- (a) in case of an initial public offer, from all the recognized stock exchanges in which the issuer proposes to get its specified securities listed; and
- (b) in case of a further public offer and rights issue:
  - (i) where the specified securities are listed only on recognized stock exchanges having nationwide trading terminals, from all such stock exchanges;
  - (ii) where the specified securities are not listed on any recognized stock exchange having nationwide trading terminals, from all the stock exchanges in which the specified securities of the issuer are proposed to be listed.
  - (iii) where the specified securities are listed on recognized stock exchanges having nationwide trading terminals as well as on the recognized stock exchanges not having nationwide trading terminals, from all recognized stock exchanges having nationwide trading terminals.

**Documents to be submitted before opening of the issue [Regulation 8]**

- (1) The lead merchant the draft offer document
  - (a) a certificate, confirming that an agreement has been entered into between the issuer and the lead merchant bankers as per the format specified in Schedule II.
  - (b) [\*\*\*]
  - (c) a due diligence certificate as per Form A of Schedule VI;
  - (d) in case of an issue of convertible debt instruments, a due diligence certificate from the debenture trustee as per Form B of Schedule VI;
  - (e) a certificate confirming compliance of the conditions specified in Part C of Schedule VHL
- (2) The lead merchant bankers shall submit the following documents to the Board after issuance of observations by the Board or after expiry of the period stipulated in sub-regulation (2) of regulation 6 if the Board has not issued observations:
  - (a) a statement certifying that all changes, suggestions and observations made by the Board have been incorporated in the offer document;
  - (b) a due diligence certificate as per Form C of Schedule VI, at the time of registering the prospectus with the Registrar of Companies;
  - (c) a copy of the resolution passed by the board of directors of the issuer for allotting specified securities to promoters towards amount received against promoters' contribution, before opening of the issue;
  - (d) a certificate from a Chartered Accountant, before opening of the issue, certifying that promoters' contribution has been received in accordance with these regulations, accompanying therewith the names and addresses of the promoters who have contributed to the promoters' contribution and the amount paid by each of them towards such contribution;
  - (e) a due diligence certificate as per Form D of Schedule VI, immediately before the opening of the issue, certifying that necessary corrective action, if any, has been taken;
  - (f) a due diligence certificate as per Form E of Schedule VI, after the issue has opened but before it closes for subscription.
- (3) The issuer shall, at the time of filing draft offer document with the recognised stock exchange where the specified securities are proposed to be listed, submit the Permanent Account Number, bank account number and passport number of its promoters to such stock exchange.

**Draft offer document to be made public [Regulation 9]**

- (1) The draft offer document filed with the Board shall be made public, for comments, if any, for a period of at least twenty one days from the date of such filing, by hosting it on the websites of the Board, recognised stock exchanges where specified securities are proposed to be listed and merchant bankers associated with the issue.
- (2) The lead merchant bankers shall, after expiry of the period stipulated in sub-regulation (1), file with the Board a statement giving information of the comments received by them or the issuer on the draft offer document during that period and the consequential changes, if any, to be made in the draft offer document.
- (3) The issuer either on the date of filing the draft offer document with the Board or on the next day shall 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 to



the public the fact of filing of draft offer document with the Board and inviting the public to give their comments to the Board in respect of disclosures made in the draft offer document.

### **Fast Track Issue [Regulation 10]**

- (1) Nothing contained in sub-regulations (1), (2) and (3) of regulation 6 and regulations 7 and 8 shall apply to a public issue or rights issue if the issuer satisfies the following conditions:
- (a) the equity shares of the issuer have been listed on any recognised stock exchange having nationwide trading terminals for a period of at least three years immediately preceding the reference date;
  - (b) the average market capitalisation of public shareholding of the issuer is at least one thousand crore rupees in case of public issue and two hundred and fifty crore rupees in case of right issue;
  - (c) the annualised trading turnover of the equity shares of the issuer during six calendar months immediately preceding the month of the reference date has been at least two per cent of the weighted average number of equity shares listed during such six months' period :  
Provided that for issuers, whose public shareholding is less than fifteen per cent of its issued equity capital, the annualised trading turnover of its equity shares has been at least two per cent of the weighted average number of equity shares available as free float during such six months' period;
  - (d) 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;
  - (e) the issuer has been in compliance with the equity listing agreement for a period of at least three years immediately preceding the reference date:  
Provided that if the issuer has not complied with the provision of the equity listing agreement 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 offer document with the Registrar of Companies or designated stock exchange, as the case may be, and adequate disclosures are made in the offer document about such non-compliances during the three years immediately preceding the reference date, it shall be deemed as compliance with the condition:  
Provided further that imposition of only monetary fines by stock exchanges on the issuer shall not be a ground for ineligibility for undertaking issuances under this regulation.
  - (f) the impact of auditors' qualifications, if any, on the audited accounts of the issuer in respect of those financial years for which such accounts are disclosed in the offer document does not exceed five per cent of the net profit or loss after tax of the issuer for the respective years;
  - (g) no show-cause notices have been issued or prosecution proceedings initiated 3[by the Board] or pending against the issuer or its promoters or whole time directors as on the reference date;
  - (ga) the issuer or promoter or promoter group or director of the issuer has not settled any alleged violation of securities laws through the consent or settlement mechanism with the Board during three years immediately preceding the reference date;
  - (h) the entire shareholding of the promoter group of the issuer is held in dematerialised form on the reference date.
  - (i) in case of a rights issue, promoters and promoter group shall mandatorily subscribe to their rights entitlement and shall not renounce their rights, except to the extent of renunciation

within the promoter group or for the purpose of complying with minimum public shareholding norms prescribed under Rule 19A of the Securities Contracts (Regulation) Rules, 1957;

- (j) the 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) the annualized delivery-based trading turnover of the equity shares during six calendar months immediately preceding the month of the reference date has been at least ten per cent of the weighted average number of equity shares listed during such six months' period;
  - (l) 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.
- (2) The issuer shall file the offer document with the Board and the recognised stock exchanges in accordance with sub-regulations (4), (5) and (6) of regulation 6 and shall pay fees to the Board as specified in Schedule IV.
- (3) The lead merchant bankers shall submit to the Board, the following documents along with the offer document:
- (a) a due diligence certificate as per Form A of Schedule VI including additional confirmations as specified in Form F of Schedule VI;
  - (b) in case of a fast track issue of convertible debt instruments, a due diligence certificate from the debenture trustee as per Form B of Schedule VI.

Explanation: for the purposes of this regulation:

- (I) "reference date" means:
  - (a) in case of a public issue by a listed issuer, the date of registering the red herring prospectus (in case of a book built issue) or prospectus (in case of a fixed price issue) with the Registrar of Companies; and
  - (b) in case of a rights issue by a listed issuer, the date of filing the letter of offer with the designated stock exchange.
- (II) "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.
- (III) "public shareholding" shall have the same meaning as assigned to it in the equity listing agreement.

### Opening of an issue [Regulation 11]

- (1) Subject to the compliance with sub-section (4) of section 60 of the Companies Act, 1956, a public issue or rights issue may be opened:
- (a) within twelve months from the date of issuance of the observations by the Board under regulation 6; or
  - (b) within three months of expiry of the period stipulated in sub-regulation (2) of regulation 6, if the Board has not issued observations:

Provided that in case of a fast track issue, the issue shall open within the period stipulated in sub-section (4) of section 60 of the Companies Act, 1956.

- (2) In case of shelf prospectus, the first issue may be opened within three months of issuance of observations by the Board.



- (3) The issuer shall, before registering the red herring prospectus (in case of a book built issue) or prospectus (in case of a fixed price issue) with the Registrar of Companies or filing the letter of offer with the designated stock exchange, as (he case may be, file with the Board through the lead merchant bankers, an updated offer document highlighting all changes made in the offer document.
- (4) Notwithstanding anything contained in this regulation, if there are changes in the offer document in relation to the matters specified in Schedule VI, the updated offer document or new draft offer document, as the case may be, shall be filed with the Board along with fees specified in Schedule IV.
- (5) An issue shall be opened after at least three working days from the date of registering the red herring prospectus with the Registrar of Companies.]

#### **Dispatch of issue material [Regulation 12]**

The lead merchant bankers shall dispatch the offer document and other issue material including forms for ASBA to the designated stock exchange, syndicate members, registrar to issue and share transfer agents, depository participants, stock brokers underwriters, bankers to the issue, investors' associations and Self Certified Syndicate Banks in advance.

#### **Underwriting [Regulation 13]**

- (1) Where the issuer making a public issue (other than through the book building process) or rights issue, desires to have the issue underwritten, it shall appoint the underwriters in accordance with Securities and Exchange Board of India (Underwriters) Regulations, 1993.
- (2) Where the issuer makes a public issue through the book building process, such issue shall be underwritten by book runners or syndicate members: '[Provided that at least 2[seventy five per cent] of the net offer to the public proposed to be compulsorily allotted to qualified institutional buyers for the purpose of compliance of the eligibility conditions specified in sub-regulation (2) of regulation 26 and regulation 27, cannot be underwritten.]
- (3) The issuer shall enter into underwriting agreement with the book runner, who in turn shall enter into underwriting agreement with syndicate members, indicating therein the number of specified securities which they shall subscribe to at the predetermined price in the event of/under-subscription in the issue.
- (4) If syndicate members fail to fulfill their underwriting obligations, the lead book runner shall fulfill the underwriting obligations.
- (5) The book runners and syndicate members shall not subscribe to the issue in any manner except for fulfilling their underwriting obligations.
- (6) [\*\*\*]
- (7) In case of every underwritten issue, the lead merchant banker or the lead book runner shall undertake minimum underwriting obligations as specified in the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992.
- (8) Where hundred per cent of the offer through offer document is underwritten, the underwriting obligations shall be for the entire hundred per cent of the offer through offer document and shall not be restricted upto the minimum subscription level.

#### **Minimum subscription [Regulation 14]**

- (1) The minimum subscription to be received in an issue shall not be less than ninety per cent of the offer through offer document

Provided that in the case of an initial public offer, the minimum subscription to be received shall be subject to allotment of minimum number of specified securities, as prescribed in sub-clause (b) of clause (2) of rule 19 of Securities Contracts (Regulation) Rules, 1957.

- (2) In the event of non-receipt of minimum subscription referred to in sub-regulation (1), all application moneys received shall be refunded to the applicants forthwith, but not later than:
  - (a) fifteen days of the closure of the issue, in case of a non-underwritten issue; and
  - (b) seventy days of the closure of the issue, in the case of an underwritten issue where minimum subscription including devolvement obligations paid by the underwriters is not received within sixty days of the closure of the issue.
- (3) The offer document shall contain adequate disclosures regarding minimum subscription as specified in Part A of Schedule VIII.
- (4) Nothing contained in this regulation, except the requirement relating to allotment of minimum, number of specified securities, shall apply to offer for sale of specified securities.

#### **Oversubscription [Regulation 15]**

No allotment shall be made by the issuer in excess of the specified securities offered through the offer document:

Provided that in case of oversubscription, an allotment of not more than ten per cent of the net offer to public may be made for the purpose of making allotment in minimum lots.

#### **Monitoring agency [Regulation 16]**

- (1) If the issue size exceeds five hundred crore rupees, the issuer shall make arrangements for the use of proceeds of the issue to be monitored by a public financial institution or by one of the scheduled commercial banks named in the offer document as bankers of the issuer:

**Provided** that nothing contained in this clause shall apply to an offer for sale or an issue of specified securities made by a bank or public financial institution [for an insurance company]

- (2) The monitoring agency shall submit its report to the issuer in the format specified in Schedule IX on a half yearly basis, till the proceeds of the issue have been fully utilized.

#### **Manner of calls [Regulation 17]**

If the issuer proposes to receive subscription monies in calls, it shall ensure that the outstanding subscription money is called within twelve months from the date of allotment in the issue and if any applicant fails to pay the call money within the said twelve months, the equity shares on which there are calls in arrear along with the subscription money already paid on such shares shall be forfeited.

**Provided** that it shall not be necessary to call the outstanding subscription money within twelve months, if the issuer has appointed a monitoring agency in terms of regulation 16.

#### **Allotment, refund and payment of interest [Regulation 18]**

- (1) The issuer and merchant bankers shall ensure that specified securities are allotted and / or application moneys are refunded within fifteen days from the date of closure of the issue.
- (2) Where specified securities are not allotted and /or application moneys are not refunded within the period stipulated in sub-regulation (1), the issuer shall under-take to pay interest at such rate and within such time as disclosed in the offer document.

#### **Restriction on further capital issues [Regulation 19]**

No issuer shall make any further issue of specified securities in any manner whether by way of public issue, rights issue, preferential issue, qualified institutions placement, issue of bonus shares or otherwise:

- (a) in case of a fast track issue, during the period between the date of registering the red herring prospectus (in case of a book built issue) or prospectus (in case of a fixed price issue) with the Registrar of Companies or filing the letter of offer with the designated stock exchange and the listing of the specified securities offered through the offer document or refund of application moneys; or





- (b) in case of other issues, during the period between the date of filing the draft offer document with the Board and the listing of the specified securities offered through the offer document or refund of application moneys,

unless full disclosures regarding the total number of specified securities and amount proposed to be raised from such further issue are made in such draft offer document or offer document, as the case may be.

#### **Additional requirements for issue of convertible debt instruments [Regulation 20]**

- (1) In addition to other requirements laid down in these regulations, an issuer making a public issue or rights issue of convertible debt instruments shall comply with the following conditions:
- (a) it has obtained credit rating from one or more credit rating agencies;
  - (b) it has appointed one or more debenture trustees in accordance with the provisions of section 117B of the Companies Act, 1956 and Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993;
  - (c) it has created debenture redemption reserve in accordance with the provisions of section 117C of the Companies Act, 1956;
  - (d) if the issuer proposes to create a charge or security on its assets in respect of secured convertible debt instruments, it shall ensure that:
    - (i) such assets are sufficient to discharge the principal amount at all times;
    - (ii) such assets are free from any encumbrance;
    - (iii) where security is already created on such assets in favour of financial institutions or banks or the issue of convertible debt instruments is proposed to be secured by creation of security on a leasehold land, the consent of such financial institution, bank or lessor for a second or pari passu charge has been obtained and submitted to the debenture trustee before the opening of the issue;
    - (iv) the security/asset cover shall be arrived at after reduction of the liabilities having a first/prior charge, in case the convertible debt instruments are secured by a second or subsequent charge.
- (2) The issuer shall redeem the convertible debt instruments in terms of the offer document.

#### **Roll over of non-convertible portion of partly convertible debt instruments [Regulation 21]**

- (1) The non-convertible portion of partly convertible debt instruments issued by a listed issuer, the value of which exceeds fifty lakh rupees, may be rolled over without change in the interest rate, subject to compliance with the provisions of section 121 of the Companies Act, 1956 and the following conditions:
- (a) seventy five per cent of the holders of the convertible debt instruments of the issuer have, through a resolution, approved the rollover through postal ballot;
  - (b) the issuer has, along with the notice for passing the resolution, sent to all holders of the convertible debt instruments, an auditors' certificate on the cash flow of the issuer and with comments on the liquidity position of the issuer;
  - (c) the issuer has undertaken to redeem the non-convertible portion of the partly convertible debt instruments of all the holders of the convertible debt instruments who have not agreed to the resolution;
  - (d) credit rating has been obtained from at least one credit rating agency registered with the Board within a period of six months prior to the due date of redemption and has been communicated to the holders of the convertible debt instruments, before the roll over.

- (2) The creation of fresh security and execution of fresh trust deed shall not be mandatory if the existing trust deed or the security documents provide for continuance of the security till redemption of secured convertible debt instruments:

Provided that whether the issuer is required to create fresh security and to execute fresh trust deed or not shall be decided by the debenture trustee.

#### **Conversion of optionally convertible debt instruments into equity share capital [Regulation 22]**

- (1) An issuer shall not convert its optionally convertible debt instruments into equity shares unless the holders of such convertible debt instruments have sent their positive consent to the issuer and non-receipt of reply to any notice sent by the issuer for this purpose shall not be construed as consent for conversion of any convertible debt instruments.
- (2) Where the value of the convertible portion of any convertible debt instruments issued by a listed issuer exceeds fifty lakh rupees and the issuer has not determined the conversion price of such convertible debt instruments at the time of making the issue, the holders of such convertible debt instruments shall be given the option of not converting the convertible portion into equity shares:

**Provided** that where the upper limit on the price of such convertible debt instruments and justification thereon is determined and disclosed to the investors at the time of making the issue, it shall not be necessary to give such option to the holders of the convertible debt instruments for converting the convertible portion into equity share capital within the said upper limit.

- (3) Where an option is to be given to the holders of the convertible debt instruments in terms of sub-regulation (2) and if one or more of such holders do not exercise the option to convert the instruments into equity share capital at a price determined in the general meeting of the shareholders, the issuer shall redeem that part of the instruments within one month from the last date by which option is to be exercised, at a price which shall not be less than its face value.
- (4) The provision of sub-regulation (3) shall not apply if such redemption is in terms of the disclosures made in the offer document.

#### **Issue of convertible debt instruments for financing [Regulation 23]**

No issuer shall issue convertible debt instruments for financing replenishment of funds or for providing loan to or for acquiring shares of any person who is part of the same group or who is under the same management:

**Provided** that an issuer may issue fully convertible debt instruments for these purposes if the period of conversion of such debt instruments is less than eighteen months from the date of issue of such debt instruments.

#### **Explanation: For the purpose of this regulation:**

- (I) Two persons shall be deemed to be "part of the same group" if they belong to the group within the meaning of clause (ef) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) or if they own interconnected undertakings within the meaning of clause (g) of section 2 of the said Act;
- (II) The expression "under the same management" shall have the same meaning as assigned to it in sub-section (1B) of section 370 of the Companies Act, 1956 (1 of 1956).

#### **Alteration of rights of holders of specified securities [Regulation 24]**

No issuer shall alter the terms (including the terms of issue) of specified securities which may adversely affect the interests of the holders of that specified securities, except with the consent in writing of the holders of not less than three-fourths of the specified securities of that class or with the sanction of a special resolution passed at a meeting of the holders of the specified securities of that class.

## PROVISIONS AS TO PUBLIC ISSUE

### ELIGIBILITY REQUIREMENTS

#### Reference date [Regulation 25]

Unless otherwise provided in this Chapter, an issuer making a public issue shall satisfy the conditions of this Chapter as on the date of filing draft offer document with the Board and also as on the date of registering the offer document with the Registrar of Companies.

#### Conditions for initial public offer [Regulation 26]

- (1) An issuer may make an initial public offer, if:
  - (a) it has net tangible assets of at least three crore rupees in each of the preceding three full years (of twelve months each), of which not more than fifty per cent are held in monetary assets:

Provided that if more than fifty per cent of the net tangible assets are held in monetary assets, the issuer has made firm commitments to utilise such excess monetary assets in its business or project;

Provided further that the limit of fifty per cent on monetary assets shall not be applicable in case the public offer is made entirely through an offer for sale;
  - (b) it has a minimum average pre-tax operating profit of rupees fifteen crore, calculated on a restated and consolidated basis, during the three most profitable years out of the immediately preceding five years;
  - (c) it has a net worth of at least one crore rupees in each of the preceding three full years (of twelve months each);
  - (d) the aggregate of the proposed issue and all previous issues made in the same financial year in terms of issue size does not exceed five times its pre-issue net worth as per the audited balance sheet of the preceding financial year;
  - (e) if it has changed its name within the last one year, at least fifty per cent of the revenue for the preceding one full year has been earned by it from the activity indicated by the new name.
- (2) An issuer not satisfying the condition stipulated in sub-regulation (1) may make an initial public offer if the issue is made through the book-building process and the issuer undertakes to allot, at least seventy five per cent of the net offer to public, to qualified institutional buyers and to refund full subscription money if it fails to make the said minimum allotment to qualified institutional buyers
- (3) An issuer may make an initial public offer of convertible debt instruments without making a prior public issue of its equity shares and listing thereof.
- (4) An issuer shall not make an allotment pursuant to a public issue if the number of prospective allottees is less than one thousand.
- (5) No issuer shall make an initial public offer if there are any outstanding convertible securities or any other right which would entitle any person with any option to receive equity shares:

Provided that the provisions of this sub-regulation shall not apply to:

  - (a) a public issue made during the currency of convertible debt instruments which were issued through an earlier initial public offer, if the conversion price of such convertible debt instruments was determined and disclosed in the prospectus of the earlier issue of convertible debt instruments;

- (b) outstanding options granted to employees pursuant to an employee stock option scheme framed in accordance with the relevant Guidance Note or Accounting Standards, if any, issued by the Institute of Chartered Accountants of India in this regard;
  - (c) fully paid-up outstanding convertible securities which are required to be converted on or before the date of filing of the red herring prospectus (in case of book-built issues) or the prospectus (in case of fixed price issues), as the case may be.
- (6) Subject to provisions of the Companies Act, 1956 and these regulations, equity shares may be offered for sale to public if such equity shares have been held by the sellers for a period of at least one year prior to the filing of draft offer document with the Board in accordance with sub-regulation (1) of regulation 6:

Provided that in case 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 as well as that of resultant equity shares together shall be considered for the purpose of calculation of one year period referred in this sub-regulation:

**Provided further** that the requirement of holding equity shares for a period of one year shall not apply:

- (a) in case of an offer for sale of specified securities 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 infrastructure sector;
  - (b) if the specified securities offered for sale were acquired pursuant to any scheme approved by a High Court under sections 391 -394 of the Companies Act, 1956, in lieu of business and invested capital which had been in existence for a period of more than one year prior to such approval.
  - (c) if the specified securities 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 draft offer document with the Board and further subject to the following, -
    - (i) 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 the Board ; and
    - (ii) such specified securities not being issued by utilization of revaluation reserves or unrealized profits of the issuer.
- (7) An issuer making an initial public offer may obtain grading for such offer from one or more credit rating agencies registering with the Board.

**Explanation.—** For the purposes of this regulation:

- (I) "net tangible assets" mean the sum of all net assets of the issuer, excluding intangible assets as defined in Accounting Standard 26 (AS 26) issued by the Institute of Chartered Accountants of India;
- (II) "project" means the object for which monies are proposed to be raised to cover the objects of the issue;
- (III) In case of an issuer which had been a partnership firm, the track record of distributable profits of the partnership firm 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, 1956 and also comply with the following:
  - (a) adequate disclosures are made in the financial statements as required to be made by the issuer as per Schedule VI of the Companies Act, 1956;

- (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 VI of the Companies Act, 1956;
  - (ii) the accounting standards of the Institute of Chartered Accountants of India have been followed;
  - (i) the financial statements present a true and fair view of the firm's accounts;
  - (iv) 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 in Explanation III are complied with;
  - (v) "bid-ask spread" means the difference between quotations for sale and purchase;
  - (vi) The term "infrastructure sector" includes the facilities or services as specified in Schedule X.

### **Conditions for further public offer [Regulation 27]**

An issuer may make a further public offer if it satisfies the conditions specified in clauses (d) and (e) of sub-regulation (1) of regulation 26 and if it does not satisfy those conditions, it may make a further public offer if it satisfies the conditions specified in sub-regulation (2) of regulation 26.

### **PRICING IN PUBLIC ISSUE**

#### **Pricing [Regulation 28]**

- (1) An issuer may determine the price of specified securities in consultation with the lead merchant banker or through the book building process.
- (2) An issuer may determine the coupon rate and conversion price of convertible debt instruments in consultation with the lead merchant banker or through the book building process.
- (3) The issuer shall undertake the book building process in a manner specified in Schedule XL.

#### **Differential pricing [Regulation 29]**

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

- (a) retail individual investors or retail individual shareholders '[or employees 2[\*\*\*] entitled for reservation made under regulation 42 making an application for specified securities of value not more than 3[two] lakh rupees,] may be offered specified securities at a price lower than the price at which net offer is made to other categories of applicants:  
Provided that such difference shall not be more than ten per cent of the price at which specified securities are offered to other categories of applicants;
- (b) in case of a book built issue, the price of the specified securities offered to an anchor investor shall not be lower than the price offered to other applicants;
- (c) in case of a composite issue, the price of the specified securities offered in the public issue may be different from the price offered in rights issue and justification for such price difference shall be given in the offer document;
- (d) in case the issuer opts for the alternate method of book building in terms of Part D of Schedule XI, the issuer may offer specified securities to its employees at a price lower than the floor price :  
Provided that the difference between the floor price and the price at which specified securities are offered to employees shall not be more than ten per cent of the floor price.

**Price and price band [Regulation 30]**

- (1) The issuer may mention a price or price band in the draft prospectus (in case of a fixed price issue) and floor price or price band in the red herring prospectus (in case of a book built issue) and determine the price at a later date before registering the prospectus with the Registrar of Companies:

Provided that the prospectus registered with the Registrar of Companies shall contain only one price or the specific coupon rate, as the case may be.

- (2) [\* \* \*] the issuer shall announce the floor price or price band at least [five working days] before the opening of the bid (in case of an initial public offer) and at least one working day before the opening of the bid (in case of a further public offer), in all the newspapers in which the pre-issue advertisement was released.
- (3) The announcement referred to in sub-regulation (2) shall contain relevant financial ratios computed for both upper and lower end of the price band and also a statement drawing attention of the investors to the section titled "basis of issue price" in the prospectus.
- (3A) The announcement referred to in sub-regulation (2) and the relevant financial ratios referred to in sub-regulation (3) shall be disclosed on the websites of those stock exchanges where the securities are proposed to be listed and shall also be prefilled in the application forms available on the websites of the stock exchanges
- (4) The cap on the price band shall be less than or equal to one hundred and twenty per cent of the floor price.
- (5) The floor price or the final price shall not be less than the face value of the specified securities.

**Explanation :** For the purposes of sub-regulation (4), the "cap on the price band" includes cap on the coupon rate in case of convertible debt instruments.

**Face value of equity shares [Regulation 31]**

- (1) Subject to the provisions of the Companies Act, 1956, the Act and these regulations, an issuer making an initial public offer may determine the face value of the equity shares in the following manner:
  - (a) if the issue price per equity share is five hundred rupees or more, the issuer shall have the option to determine the face value at less than ten rupees per equity share:
 

Provided that the face value shall not be less than one rupee per equity share;
  - (b) if the issue price per equity share is less than five hundred rupees, the face value of the equity shares shall be ten rupees per equity share: Provided that nothing contained in this sub-regulation shall apply to initial public offer made by any Government company, statutory authority or corporation or any special purpose vehicle set up by any of them, which is engaged in infrastructure sector.
- (2) The disclosure about the face value of equity shares (including the statement about the issue price being "X" times of the face value) shall be made in the advertisements, offer documents and application forms in identical font size as that of issue price or price band.

**Explanation:** For the purposes of this regulation, the term "infrastructure sector" includes the facilities or services as specified in Schedule X.

**PROMOTERS' CONTRIBUTION****Minimum promoters' contribution [Regulation 32]**

- (1) The promoters of the issuer shall contribute in the public issue as follows:
  - (a) in case of an initial public offer, not less than twenty per cent of the post issue capital



Provided that in case the post issue shareholding of the promoters is less than twenty per cent, alternative investment funds may contribute for the purpose of meeting the shortfall in minimum contribution as specified for promoters, subject to a maximum of ten per cent of the post issue capital.

- (b) in case of a further public offer, either to the extent of twenty per cent of the proposed issue size or to the extent of twenty per cent of the post-issue capital;
  - (c) in case of a composite issue, either to the extent of twenty per cent of the proposed issue size or to the extent of twenty per cent of the post-issue capital excluding the rights issue component.
- (2) In case of a public issue or composite issue of convertible securities, minimum promoters' contribution shall be as follows:

- (a) the promoters shall contribute twenty per cent as stipulated in clause (a), (b) or (c) of sub-regulation (1), as the case may be, either by way of equity shares or by way of subscription to the convertible securities:

Provided that if the price of the equity shares allotted pursuant to conversion is not predetermined and not disclosed in the offer document, the promoters shall contribute only by way of subscription to the convertible securities being issued in the public issue and shall undertake in writing to subscribe to the equity shares pursuant to conversion of such securities;

- (b) in case of any issue of convertible securities which are convertible or exchangeable on different dates and if the promoters' contribution is by way of equity shares (conversion price being pre-determined), such contribution shall not be at a price lower than the weighted average price of the equity share capital arising out of conversion of such securities;
- (c) subject to the provisions of clauses (a) and (b) above, in case of an initial public offer of convertible debt instruments without a prior public issue of equity shares, the promoters shall bring in a contribution of at least twenty per cent of the project cost in the form of equity shares, subject to contributing at least twenty per cent of the issue size from their own funds in the form of equity shares:

Provided that if the project is to be implemented in stages, the promoters' contribution shall be with respect to total equity participation till the respective stage vis-a-vis the debt raised or proposed to be raised through the public issue.

- (3) In case of a further public offer or composite issue where the promoters contribute more than the stipulated minimum promoters' contribution, the allotment with respect to excess contribution shall be made at a price determined in terms of the provisions of regulation 76 or the issue price, whichever is higher.
- (4) The promoters shall satisfy the requirements of this regulation at least one day prior to the date of opening of the issue and the amount of promoters' contribution shall be kept in an escrow account with a scheduled commercial bank and shall be released to the issuer along with the release of the issue proceeds:

Provided that where the promoters' contribution has already been brought in and utilised, the issuer shall give the cash flow statement disclosing the use of such funds in the offer document:

Provided further that where the minimum promoters' contribution is more than one hundred crore rupees, the promoters shall bring in at least one hundred crore rupees before the date of opening of the issue and the remaining amount may be brought on pro rata basis before the calls are made to public.

**Explanation.—** For the purpose of this regulation:

- (I) Promoters' contribution shall be computed on the basis of the post-issue expanded capital:

- (a) assuming full proposed conversion of convertible securities into equity shares;
- (b) assuming exercise of all vested options, where any employee stock options are outstanding at the time of initial public offer in terms of proviso (b) to sub-regulation (5) of regulation 26.
- (II) For computation of "weighted average price":
  - (a) "weights" means the number of equity shares arising out of conversion of such specified securities into equity shares at various stages;
  - (b) "price" means the price of equity shares on conversion arrived at after taking into account predetermined conversion price at various stages.

**Securities ineligible for minimum promoters' contribution [Regulation 33]**

- (1) For the computation of minimum promoters' contribution, the following-specified securities shall not be eligible:
  - (a) specified securities acquired during the preceding three years, if they are:
    - (i) acquired for consideration other than cash and revaluation of assets or capitalisation of intangible assets is involved in such transaction; or
    - (ii) resulting from a bonus issue by utilisation of revaluation reserves or unrealised profits of the issuer or from bonus issue against equity shares which are ineligible for minimum promoters' contribution;
  - (b) specified securities acquired by promoters [and alternative investment funds] during the preceding one year at a price lower than the price at which specified securities are being offered to public in the initial public offer:

**Provided that nothing contained in this clause shall apply:**

- (i) if promoters [alternative investment funds, as applicable] pay to the issuer, the difference between the price at which specified securities are offered in the initial public offer and the price at which the specified securities had been acquired;
- (ii) if such specified securities are acquired in terms of the scheme under sections 391-394 of the Companies Act, 1956, as approved by a High Court, by promoters in lieu of business and invested capital that had been in existence for a period of more than one year prior to such approval;
- (iii) to an initial public offer by a Government company, statutory authority or corporation or any special purpose vehicle set up by any of them, which is engaged in infrastructure sector;
- (c) specified securities allotted to promoters ][and alternative investment funds] during the preceding one year at a price less than the issue price, against funds brought in by them during that period, in case of an issuer formed by conversion of one or more partnership firms, where the partners of the erstwhile partnership firms are the promoters of the issuer and there is no change in the management:
 

Provided that specified securities, allotted to promoters against capital existing in such firms for a period of more than one year on a continuous basis, shall be eligible;
- (d) specified securities pledged with any creditor.
- (2) Specified securities referred to in clauses (a) and (c) of sub-regulation (1) shall be eligible for the computation of promoters' contribution, if such securities are acquired pursuant to a scheme which has been approved under sections 391-394 of the Companies Act, 1956.

**Explanation.—** For the purposes of clause (b) of sub-regulation (1), the term "infrastructure sector" includes the facilities or services as specified in Schedule X.

### **Requirement of minimum promoters' contribution not applicable in certain cases [Regulation 34]**

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

- (a) an issuer which does not have any identifiable promoter;
- (b) a further public offer, where the equity shares '[of the issuer] 2[\*\*\*]' are not infrequently traded in a recognised stock exchange for a period of at least three years and the issuer has a track record of dividend payment for at least immediately preceding three years:

Provided that where promoters propose to subscribe to the specified securities offered to the extent greater than higher of the two options available in clause (b) of sub-regulation (1) of regulation 32, the subscription in excess of such percentage shall be made at a price determined in terms of the provisions of regulation 76 or the issue price, whichever is higher;

- (c) rights issues.

**Explanation.—** For the purpose of clause (b), the words "infrequently traded" have the same meaning as assigned to them in Explanation to sub-regulation (5) of regulation 20 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and the reference date for the purpose of computing the annualised trading turnover referred to in the said Explanation shall be the date of filing the draft offer document with the Board and in case of a fast track issue, the date of filing the offer document with the Registrar of Companies before opening of the issue.

### **RESTRICTION ON TRANSFERABILITY (LOCK-IN) OF PROMOTERS' CONTRIBUTION, ETC.**

#### **Date of commencement of lock-in and inscription of non-transferability [Regulation 35]**

- (1) Save as otherwise provided in this Chapter, specified securities held by promoters and persons other than promoters shall not be transferable (hereinafter referred to as "lock-in") from the date of allotment of the specified securities in the proposed public issue for the period stipulated in this Chapter.
- (2) The certificate of specified securities which are subject to lock-in shall contain the inscription "non-transferable" and the lock-in period and in case such specified securities are dematerialised, the issuer shall ensure that lock-in is recorded by the depository.
- (3) Where the specified securities which are subject to lock-in are partly paid-up and the amount called-up on such specified securities is less than the amount called-up on the specified securities issued to the public, the "lock-in" shall end only on the expiry of three years after such specified securities have become pari passu with the specified securities issued to the public.

#### **Lock-in of specified securities held by promoters [Regulation 36]**

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

- (a) minimum promoters' contribution [including contribution made by alternative investment funds, referred to in proviso to clause (a) of sub-regulation (1) of regulation 32,] shall be locked-in for a period of three years from the date of commencement of commercial production or date of allotment in the public issue, whichever is later;
- (b) promoters' holding in excess of minimum promoters' contribution shall be locked-in for a period of one year:

**Provided** that excess promoters' contribution as provided in proviso to clause (b) of regulation 34 shall not be subject to lock-in.

**Explanation.—** For the purposes of this clause, the expression "date of commencement of commercial production" means the last date of the month in which commercial production in a manufacturing company is expected to commence as stated in the offer document.

### **Lock-in of specified securities held by persons other than promoters [Regulation 37]**

In case of an initial public offer, the entire pre-issue capital held by persons other than promoters shall be locked-in for a period of one year:

Provided that nothing contained in this regulation shall apply to:

- (a) equity shares allotted to employees under an employee stock option or employee stock purchase scheme of the issuer prior to the initial public offer, if the issuer has made full disclosures with respect to such options or scheme in accordance with Part A of Schedule VIII;
- (b) equity shares held by a venture capital fund or alternative investment fund of Category I or a foreign venture capital investor:

Provided that such equity shares shall be locked-in for a period of at least one year from the date of purchase by the venture capital fund or alternative investment fund or foreign venture capital investor.

**Explanation.-** For the purpose of clause (b), 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.

### **Lock-in of specified securities lent to stabilising agent under green shoe option [Regulation 38]**

The lock-in provisions of this Chapter shall not apply with respect to the specified securities lent to stabilising agent for the purpose of green shoe option, during the period starting from the date of lending of such specified securities and ending on the date on which they are returned to the lender in terms of sub-regulation (5) or (6) of regulation 45:

Provided that the specified securities shall be locked-in for the remaining period from the date on which they are returned to the lender.

### **Pledge of locked-in specified securities [Regulation 39]**

Specified securities held by promoters and locked-in may be pledged with any scheduled commercial bank or public financial institution as collateral security for loan granted by such bank or institution, subject to the following:

- (a) if the specified securities are locked-in in terms of clause (a) of regulation 36, the loan has been granted by such bank or institution for the purpose of financing one or more of the objects of the issue and pledge of specified securities is one of the terms of sanction of the loan;
- (b) if the specified securities are locked-in in terms of clause (b) of regulation 36 and the pledge of specified securities is one of the terms of sanction of the loan.

### **Transferability of locked-in specified securities [Regulation 40]**

Subject to the provisions of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, the specified securities held by promoters and locked-in as per regulation 36 may be transferred to another promoter or any person of the promoter group or a new promoter or a person in control of the issuer and the specified securities held by persons other than promoters and locked-in as per regulation 37 may be transferred to any other person holding the specified securities which are locked-in along with the securities proposed to be transferred:

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

## MINIMUM OFFER TO PUBLIC, RESERVATIONS, ETC.

### Minimum net offer to public [Regulation 41]

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

### Reservation on competitive basis [Regulation 42]

- (1) In case of an issue made through the book building process, the issuer may make reservation on competitive basis out of the issue size excluding promoters' contribution and net offer to public in favour of the following categories of persons:
  - (a) employees; and in case of a new issuer, persons who are in the permanent and full time employment of the promoting companies excluding the promoters and an immediate relative of the promoter of such companies;
  - (b) shareholders (other than promoters) of:
    - (i) listed promoting companies, in case of a new issuer; and
    - (ii) listed group companies, in case of an existing issuer:

Provided that if the promoting companies are designated financial institutions or state and central financial institutions, the shareholders of such promoting companies shall not be eligible for the reservation on competitive basis;
  - (c) persons who, as on the date of filing the draft offer document with the Board, are associated with the issuer as depositors, bondholders or subscribers to services of the issuer making an initial public offer :

Provided that the issuer shall not make the reservation to the issue management team, syndicate members, their promoters, directors and employees and for the group or associate companies of the issue management team and syndicate members and their promoters, directors and employees.
- (2) In case of an issue made other than through the book building process, the issuer may make reservation on competitive basis out of the issue size excluding promoters' contribution and net offer to public in favour of the following categories of persons:
  - (a) employees; and in case of a new issuer, persons who are in the permanent and full time employment of the promoting companies excluding the promoters and an immediate relative of the promoter of such companies;
  - (b) shareholders (other than promoters) of:
    - (i) listed promoting companies, in the case of a new issuer; and
    - (ii) listed group companies, in the case of an existing issuer:

Provided that if the promoting companies are designated financial institutions or state and central financial institutions, the shareholders of such promoting companies shall not be eligible for the reservation on competitive basis.
- (3) In case of a further public offer (not being a composite issue), the issuer may make reservation on competitive basis out of the issue size excluding promoters' contribution and net offer to public in favour of retail individual shareholders of the issuer.
- (4) The reservation on competitive basis shall be subject to following conditions:
  - (a) the aggregate of reservations for employees shall not exceed '[five per cent of the post issue capital of the issuer];

- (b) reservation for shareholders shall not exceed ten per cent of the issue size;
  - (c) reservation for persons who as on the date of filing the draft offer document with the Board, have business association as depositors, bondholders and subscribers to services with the issuer making an initial public offer shall not exceed five per cent of the issue size;
  - (d) no further application for subscription in the net offer-to public category shall be entertained from any person (except an employee and retail individual shareholder) in favour of whom reservation on competitive basis is made;
  - (e) any unsubscribed portion in any reserved category may be added to any other reserved category and the unsubscribed portion, if any, after such inter se adjustments among the reserved categories shall be added to the net offer to the public category;
  - (f) in case of under subscription in the net offer to the public category, spill-over to the extent of under subscription shall be permitted from the reserved category to the net public offer category;
  - (g) value of allotment to any employee in pursuance of reservation made under sub-regulation (1) or (2), as the case may be, shall not exceed 3[two] lakh rupees.]
- (5) In the case of reserved categories, a single applicant in the reserved category may make an application for a number of specified securities which exceeds the reservation.

**Explanation.-** For the purposes of this regulation:

- (I) The term "reservation on competitive basis" means reservation wherein specified securities are allotted in proportion of the number of specified securities applied for in respect of a particular reserved category to the number of specified securities reserved for that category;
- (II) The term "new issuer" means an issuer which has not completed twelve months of commercial operation and its audited operative results are not available.

#### **Allocation in net offer to public [Regulation 43]**

- (1) No person shall make an application in the net offer to public category for that number of specified securities which exceeds the number of specified securities offered to public.
- (2) In an issue made through the book building process under sub-regulation (1) of regulation 26, the allocation in the net offer to public category shall be as follows:
  - (a) not less than thirty five per cent to retail individual investors;
  - (b) not less than fifteen per cent to non-institutional investors;
  - (c) not more than fifty per cent to qualified institutional buyers, five per cent of which shall be allocated to mutual funds;

**Provided** that in addition to five per cent allocation available in terms of clause (c), mutual funds shall be eligible for allocation under the balance available for qualified institutional buyers.
- (2A) In an issue made through the book building process under sub-regulation (2) of regulation 26, the allocation in the net offer to public category shall be as follows:
  - (a) not more than ten per cent to retail individual investors;
  - (b) not more than fifteen per cent to non-institutional investors;
  - (c) not less than seventy five per cent to qualified institutional buyers, five per cent of which shall be allocated to mutual funds;





**Provided** that in addition to five per cent allocation available in terms of clause (c), mutual funds shall be eligible for allocation under the balance available for qualified institutional buyers.]

- (3) In an issue made through the book building process, the issuer may allocate upto sixty per cent of the portion available for allocation to qualified institutional buyers to an anchor investor in accordance with the conditions specified in this regard in Schedule XI.
- (4) In an issue made other than through the book building process, allocation in the net offer to public category shall be made as follows:
  - (a) minimum fifty per cent to retail individual investors; and
  - (b) remaining to:
    - (i) individual applicants other than retail individual investors; and
    - (ii) other investors including corporate bodies or institutions, irrespective of the number of specified securities applied for;
  - (c) the unsubscribed portion in either of the categories specified in clause (a) or (b) may be allocated to applicants in the other category.

**Explanation.-** For the purpose of sub-regulation (4), if the retail individual investor category is entitled to more than fifty per cent on proportionate basis, the retail individual investors shall be allocated that higher percentage.

#### **Safety-net arrangement [Regulation 44]**

An issuer may provide for a safety-net arrangement for the specified securities offered in any public issue in consultation with the merchant banker after ascertaining the financial capacity of the person offering the safety-net arrangement, subject to disclosures specified in this regard in Part A of Schedule VIII:

Provided that any such arrangement shall provide for an offer to purchase up to a maximum of one thousand specified securities per original resident retail individual allottee at the issue price within a period of six months from the last date of despatch of security certificates or credit of demat account.

**Explanation.—** For the purpose of this regulation, the term “safety net arrangement” means an arrangement provided by the issuer under which a person offers to purchase specified securities from the original resident retail individual allottees at the issue price.

#### **Price stabilisation through green shoe option [Regulation 45]**

- (1) An issuer making a public issue of specified securities may provide green shoe option for stabilising the post listing price of its specified securities, subject to the following:
  - (a) the issuer has been authorized, by a resolution passed in the general meeting of shareholders approving the public issue, to allot specified securities to the stabilising agent, if required, on the expiry of the stabilisation period;
  - (b) the issuer has appointed a merchant banker or book runner, as the case may be, from amongst the merchant bankers appointed by the issuer as a stabilising agent, who shall be responsible for the price stabilisation process;
  - (c) prior to filing the draft offer document with the Board, the issuer and the stabilising agent have entered into an agreement, stating all the terms and conditions relating to the green shoe option including fees charged and expenses to be incurred by the stabilising agent for discharging his responsibilities;
  - (d) prior to filing the offer document with the Board, the stabilising agent has entered into an agreement with the promoters or pre-issue shareholders or both for borrowing specified

securities from them in accordance with clause (g) of this sub-regulation, specifying therein the maximum number of specified securities that may be borrowed for the purpose of allotment or allocation of specified securities in excess of the issue size (hereinafter referred to as the "over-allotment"), which shall not be in excess of fifteen per cent of the issue size;

- (e) subject to clause (d), the lead merchant banker or lead book runner, in consultation with the stabilising agent, shall determine the amount of specified securities to be over-allotted in the public issue;
  - (f) the draft and final offer documents shall contain all material disclosures about the green shoe option specified in this regard in Part A of Schedule VIII;
  - (g) in case of an initial public offer pre-issue shareholders and promoters and in case of a further public offer pre-issue shareholders holding more than five per cent specified securities and promoters, may lend specified securities to the extent of the proposed over-allotment;
  - (h) the specified securities borrowed shall be in dematerialised form and allocation of these securities shall be made pro rata to all successful applicants.
- (2) For the purpose of stabilisation of post'-listing price of the specified securities, the stabilising agent shall determine the relevant aspects including the timing of buying such securities, quantity to be bought and the price at which such securities are to be bought from the market.
  - (3) The stabilisation process shall be available for a period not exceeding thirty days from the date on which trading permission is given by the recognised stock exchanges in respect of the specified securities allotted in the public issue.
  - (4) The stabilising agent shall open a special account, distinct from the issue account, with a bank for crediting the monies received from the applicants against the over-allotment and a special account with a depository participant for crediting specified securities to be bought from the market during the stabilisation period out of the monies credited in the special bank account.
  - (5) The specified securities bought from the market and credited in the special account with the depository participant shall be returned to the promoters or pre-issue shareholders immediately, in any case not later than two working days after the end of the stabilization period.
  - (6) On expiry of the stabilisation period, if the stabilising agent has not been able to buy specified securities from the market to the extent of such securities over-allotted, the issuer shall allot specified securities at issue price in dematerialised form to the extent of the shortfall to the special account with the depository participant, within five days of the closure of the stabilisation period and such specified securities shall be returned to the promoters or pre-issue shareholders by the stabilising agent in lieu of the specified securities borrowed from them and the account with the depository participant shall be closed thereafter.
  - (7) The issuer shall make a listing application in respect of the further specified securities allotted under sub-regulation (6), to all the recognised stock exchanges where the specified securities allotted in the public issue are listed and the provisions of Chapter VII shall not be applicable to such allotment.
  - (8) The stabilising agent shall remit the monies with respect to the specified securities allotted under sub-regulation (6) to the issuer from the special bank account.
  - (9) Any monies left in the special bank account after remittance of monies to the issuer under sub-regulation (8) and deduction of expenses incurred by the stabilising agent for the stabilisation process shall be transferred to the Investor Protection and Education Fund established by the Board and the special bank account shall be closed soon thereafter.
  - (10) The stabilising agent shall submit a report to the stock exchange on a daily basis during the stabilisation period and a final report to the Board in the format specified in Schedule XII.



- (11) The stabilising agent shall maintain a register for a period of at least three years from the date of the end of the stabilisation period and such register shall contain the following particulars:
- (a) The names of the promoters or pre-issue shareholder from whom the specified securities were borrowed and the number of specified securities borrowed from each of them;
  - (b) The price, date and time in respect of each transaction effected in the course of the stabilisation process; and
  - (c) The details of allotment made by the issuer on expiry of the stabilisation process.

#### **Period of subscription [Regulation 46]**

- (1) Except as otherwise provided in these regulations] a public issue shall be kept open for at least three working days but not more than .en working days including the days for which the issue is kept open in case of revision in price band.
- (2) In case the price band in a public issue made through the book building process is revised, the bidding (issue) period disclosed in the red herring prospectus shall be extended for a minimum period of three working days:

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

#### **Pre-issue advertisement for public Issue [Regulation 47]**

- (1) Subject to the provisions of section 66 of the Companies Act, 1956, the issuer shall, after registering the red herring prospectus (in case of a b )ok 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.
- (2) The pre-issue advertisement shall be in the format and shall contain the disclosures specified in Part A of Schedule XIII.

#### **Issue opening and issue closing advertisement for public issue [Regulation 48].**

An issuer may issue advertisements for issue opening and issue closing advertisements, which shall be in the formats specified in Parts B and C of Schedule XIII.

#### **Minimum application value [Regulation 49]**

- (1) The issuer shall stipulate in the offer document, the minimum application size in terms of number of specified securities which shall fall within the range of minimum application value of [ten thousand rupees to fifteen thousand rupees].
- (2) The issuer shall invite applications in multiples of the minimum application value, an illustration whereof is given in Schedule XIV.
- (3) The minimum sum payable on application shall not be less than twenty five per cent of the issue price:

Provided that in case of an offer for sale, the issue price payable for each specified security shall be brought in at the time of application.

**Explanation.-** For the purpose of this regulation, "minimum application value" shall be with reference to the issue price of the specified securities and not with reference to the amount payable on application.

#### **Allotment procedure and basis of allotment [Regulation 50]**

- (1) The allotment of specified securities to applicants other than retail individual investors and] anchor investors shall be on proportionate basis within the specified investor categories and the number

of securities allotted shall be rounded off to the nearest integer, subject to minimum allotment being equal to the minimum application size as determined and disclosed by the issuer :

Provided that value of specified securities allotted to any person in pursuance of reservation made under clause (a) of sub-regulation (1) or clause (a) of sub-regulation (2) of regulation 42, shall not exceed two lakh rupees.

- (1A) The allotment of specified securities to each retail individual investor shall not be less than the minimum bid lot, subject to availability of shares in retail individual investor category, and the remaining available shares, if any, shall be allotted on a proportionate basis.
- (2) The executive director or managing director of the designated stock exchange along with the post issue lead merchant bankers and registrars to the issue shall ensure that the basis of allotment is finalised in a fair and proper manner in accordance with the allotment procedure as specified in Schedule XV.

#### **Utilisation of subscription money [Regulation 51]**

The post-issue lead merchant banker shall ensure that moneys received in respect of the issue are released to the issuer in compliance with the provisions of section 73 of the Companies Act, 1956.

#### **Annual Updation of Offer Document [Regulation 51A]**

The disclosures made in the red herring prospectus while making an initial public offer, shall be updated on an annual basis by the issuer and shall be made publicly accessible in the manner specified by the Board.

### **RIGHTS ISSUE**

#### **Record date [Regulation 52]**

- (1) A listed issuer making a rights issue shall announce a record date for the purpose of determining the shareholders eligible to apply for specified securities in the proposed rights issue.
- (2) The issuer shall not withdraw rights issue after announcement of the record date.
- (3) If the issuer withdraws the rights issue after announcing the record date, it shall not make an application for listing of any of its specified securities on any recognised stock exchange for a period of twelve months from the record date announced under sub-regulation (1):

Provided that the issuer may seek listing of its equity shares allotted pursuant to conversion or exchange of convertible securities issued prior to the announcement of the record date, on the recognised stock exchange where its securities are listed.

#### **Restriction on rights issue [Regulation 53]**

- (1) No issuer shall make a rights issue of equity shares 2[\*\*\*] unless it has made reservation of equity shares of the same class in favour of the holders of 3[\*\*\*] outstanding compulsorily convertible debt instruments, if any, in proportion to the convertible part thereof.
- (2) The equity shares 4[so] reserved for the holders of fully or partially [compulsorily] convertible debt instruments shall be issued at the time of conversion of such convertible debt instruments on the same terms 5[at] which the equity shares offered in the rights issue were issued.

#### **Letter of offer, abridged letter of offer, pricing and period of subscription [Regulation 54]**

- (1) The abridged letter of offer, along with application form, shall be dispatched through registered post or speed post to all the existing shareholders at least three days before the date of opening of the issue :

Provided that the letter of offer shall be given by the issuer or lead merchant banker to any existing shareholder who has made a request in this regard.

- (2) The shareholders who have not received the application form may apply in writing on a plain paper, along with the requisite application money.
- (3) The shareholders making application otherwise than on the application form shall not renounce their rights and shall not utilise the application form for any purpose including renunciation even if it is received subsequently.
- (4) Where a shareholder makes an application on application form as well as on plain paper, the application is liable to be rejected.
- (5) The issue price shall be decided before determining the record date which shall be determined in consultation with the designated stock exchange.
- (6) A rights issue shall be open for subscription on for a minimum period of fifteen days and for a maximum period of thirty days.
- (7) The issuer shall give only one payment option out of the following to all the investors—
  - (a) part payment on application with balance money to be paid in calls; or
  - (b) full payment on application:Provided that where the issuer has given the part payment option to investors, such issuer shall obtain the necessary regulatory approvals to facilitate the same.]

**Pre-Issue Advertisement for rights issue [Regulation 55]**

- (1) The issuer shall issue an advertisement for rights issue disclosing the following:
  - (a) the date of completion of despatch of abridged letter of offer and the application form;
  - (b) the centres other than registered office of the issuer where the shareholders or the persons entitled to receive the rights entitlements may obtain duplicate copies of the application forms in case they do not receive the application form within a reasonable time after opening of the rights issue;
  - (c) a statement that if the shareholders entitled to receive the rights entitlements have neither received the original application forms nor they are in a position to obtain the duplicate forms, they may make application in writing on a plain paper to subscribe to the rights issue;
  - (d) a format to enable the shareholders entitled to apply against their rights entitlements, to make the application on a plain paper specifying therein necessary particulars such as name, address, ratio of rights issue, issue price, number of equity shares held, ledger folio numbers, depository participant ID, client ID, number of equity shares entitled and applied for, additional shares if any, amount to be paid along with application, and particulars of cheque, etc. to be drawn in favour of the issuer's account;
  - (e) a statement that the applications can be directly sent by the shareholders entitled to apply against rights entitlements through registered post together with the application moneys to the issuer's designated official at the address given in the advertisement;
  - (f) a statement to the effect that if the shareholder makes an application on plain paper and also on application form both his applications shall be liable to be rejected at the option of the issuer.
- (2) The advertisement shall be made 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, at least three days before the date of opening of the issue.

**Reservation for employees along with rights issue [Regulation 55A].**

Subject to other applicable provision of these regulations the issuer may make reservation for employees alongwith rights issue subject to the condition that value of allotment to any employee shall not exceed two lakh rupees.]

**Utilisation of funds raised in rights issue [Regulation 56]**

The issuer shall utilise funds collected in rights issues after the finalisation of the basis of allotment.

**MANNER OF DISCLOSURES IN THE OFFER DOCUMENTS**

**Manner of disclosures in the offer document [Regulation 57]**

- (1) The offer document shall contain all material disclosures which are true and adequate so as to enable the applicants to take an informed investment decision.
- (2) Without prejudice to the generality of sub-regulation (1):
  - (a) the red-herring prospectus, shelf prospectus and prospectus shall contain:
    - (i) the disclosures specified in Schedule II of the Companies Act, 1956; and
    - (ii) the disclosures specified in Part A of Schedule VIII, subject to the provisions of Parts B and C thereof;
    - (iii) the letter of offer shall contain disclosures as specified in Part E of Schedule VD3

Provided that in the case of a further public offer or a rights issue, the offer document shall be deemed to be in compliance with the provisions of this regulation, if suitable references are made to the updated disclosures in the offer document referred to in regulation 51A of these regulations.

**Abridged prospectus, abridged letter of offer and ASBA [Regulation 58]**

- (1) The abridged prospectus shall contain the disclosures as specified in Part D of Schedule VIII.
- (2) The abridged letter of offer shall contain the disclosures as specified in Part F of Schedule VIII.
- (3) The abridged prospectus and abridged letter of offer shall not contain any matter extraneous to the contents of the offer document.
- (4) Every application form including ASBA form distributed by the issuer or any other person in relation to an issue shall be accompanied by a copy of the abridged prospectus or abridged letter of offer, as the case may be.
- (5) In all, -
  - (i) Public issues, the issuer shall accept bids using only ASBA facility in the manner specified by the Board;
  - (ii) Rights issues, where not more than one payment option is given, the issuer shall provide the facility of ASBA in accordance with the procedure and eligibility criteria specified by the Board:

Provided that in case of qualified institutional buyers and non-institutional investors the issuer shall accept bids using ASBA facility only

**GENERAL OBLIGATIONS OF ISSUER AND INTERMEDIARIES WITH RESPECT TO PUBLIC ISSUE AND RIGHTS ISSUE**

**Prohibition on payment of incentives [Regulation 59]**

No person connected with the issue shall 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 for allotment of specified securities: Provided that nothing contained in this regulation shall apply to fees or commission for services rendered in relation to the issue.





**Explanation.-** For the purpose of this regulation, the expression “person connection with the issue” includes a person connected with the distribution of the issue.

**Public communications, publicity materials, advertisements and research reports [Regulation 60]**

(1) Any public communication including advertisement and publicity material issued by the issuer or research report made by the issuer or any intermediary concerned with the issue or their associates shall contain only factual information and shall not contain projections, estimates, conjectures, etc. or any matter extraneous to the contents of the offer document.

(2) All public communications and publicity material issued or published in any media during the period commencing from the date of the meeting of the board of directors of the issuer in which the public issue or rights issue is approved till the date of filing draft offer document with the Board shall be consistent with its past practices:

Provided that where such public communication or publicity material is not consistent with the past practices of the issuer, it shall be prominently displayed or announced in such public communication or publicity material that the issuer is proposing to make a public or rights issue of specified securities in the near future and is in the process of filing a draft offer document with the Board.

(3) All public communications and publicity material issued or published in any media during the period commencing from the date of filing draft offer document with the Board till the date of allotment of securities offered in the issue, shall prominently disclose that:

(a) the issuer is proposing to make a public issue or rights issue of the specified securities and has filed a draft offer document with the Board or has filed the red herring prospectus or prospectus with the Registrar of Companies or the letter of offer with the designated stock exchange, as the case may be.

(b) the draft offer document, red herring prospectus or final offer document, as the case may be, is available on the website of the Board, lead merchant bankers or lead book runners.

Provided that requirements of this sub-regulation shall not be applicable in case of product advertisements of the issuer

(4) The issuer shall make prompt, true and fair disclosure of all material developments which take place during the following period mentioned in this sub-regulation, relating to its business and securities and also relating to the business and securities of its subsidiaries, group companies, etc., which may have a material effect on the issuer, by issuing public notices in all the newspapers in which the issuer had issued pre-issue advertisement under regulation 47 or regulation 55, as the case may be:

(a) in case of public issue, between the date of registering final prospectus or the red herring prospectus, as the case may be, with the Registrar of Companies, and the date of allotment of specified securities;

(b) in case of a rights issue, between the date of filing the letter of offer with the designated stock exchange and the date of allotment of the specified securities.

(5) The issuer shall not, directly or indirectly, release, during any conference or at any other time, any material or information which is not contained in the offer document.

(6) In respect of all public communications, issue advertisements and publicity materials, the issuer shall obtain approval from the lead merchant bankers responsible for marketing the issue and shall also make copies of all issue related materials available with the lead merchant bankers at least till the allotment is completed.

(7) Any advertisement or research report issued or caused to be issued by an issuer, any intermediary concerned with the issue or their associates shall comply with the following:

(a) it shall be truthful, fair and shall not be manipulative or deceptive or distorted and it shall not contain any statement, promise or forecast which is untrue or misleading;

- (b) if it reproduces or purports to reproduce any information contained in an offer document, it shall reproduce such information in full and disclose all relevant facts and not be restricted to select extracts relating to that information;
  - (c) it shall be set forth in a clear, concise and understandable language;
  - (d) it shall not include any issue slogans or brand names for the issue except the normal commercial name of the issuer or commercial brand names of its products already in use;
  - (e) if it presents any financial data, data for the past three years shall also be included along with particulars relating to sales, gross profit, net profit, share capital, reserves, earnings per share, dividends and the book values;
  - (f) no advertisement shall use extensive technical, legal terminology or complex language and excessive details which may distract the investor;
  - (g) no issue advertisement shall contain statements which promise or guarantee rapid increase in profits;
  - (h) no issue advertisement shall display models, celebrities, fictional characters, landmarks or caricatures or the likes;
  - (i) no issue advertisement shall appear in the form of crawlers (the advertisements which run simultaneously with the programme in a narrow strip at the bottom of the television screen) on television;
  - (j) in any issue advertisement on television screen, the risk factors shall not be scrolled on the television screen and the advertisement shall advise the viewers to refer to the red herring prospectus or other offer document for details;
  - (k) no issue advertisement shall contain slogans, expletives or non-factual and unsubstantiated titles;
  - (l) if an advertisement or research report contains highlights, it shall also contain risk factors with equal importance in all respects including print size of not less than point seven size;
  - (m) an issue advertisement displayed on a billboard shall not contain information other than that specified in Parts A, B and C of Schedule XIII, as applicable;
  - (n) an issue advertisement which contains highlights or information other than the details contained in the format as specified in Parts A and B of Schedule XIII shall contain risk factors.
- (8) No advertisement shall be issued giving any impression that the issue has been fully subscribed or oversubscribed during the period the issue is open for subscription.
- (9) An announcement regarding closure of issue shall be made only after the lead merchant banker(s) is satisfied that at least ninety per cent of the offer through offer document has been subscribed and a certificate has been obtained to that effect from the registrar to the issue:
- Provided that such announcement shall not be made before the date on which the issue is to be closed.
- (10) No advertisement or distribution material with respect to the issue shall contain any offer of incentives, whether direct or indirect, in any manner, whether in cash or kind or services or otherwise.
- (11) No product advertisement shall contain any reference, directly or indirectly, to the performance of the issuer during the period commencing from the date of the resolution of the board of directors of the issuer approving the public issue or rights issue till the date of allotment of specified securities offered in such issue.

- (12) A research report may be prepared only on the basis of information, disclosed to the public by the issuer by updating the offer document or otherwise.
- (13) No selective or additional information or information which is extraneous to the information disclosed to the public through the offer document or otherwise, shall be given by the issuer or any member of the issue management team or syndicate to any particular section of the investors or to any research analyst in any manner whatsoever, including at road shows, presentations, in research or sales reports or at bidding centres.
- (14) The merchant bankers shall submit a compliance certificate in the format specified in Part D of Schedule XIII, for the period between the date of filing the draft offer document with the Board and the date of closure of the issue, in respect of news reports appearing in any of the following media:
  - (a) newspapers mentioned in sub-regulation (3) of regulation 9;
  - (b) major business magazines;
  - (c) print and electronic media controlled by a media group where the media group has a private treaty/shareholders' agreement with the issuer or promoters of the issuer.

**Explanation.-** For the purpose of this regulation:

- (I) "public communication or publicity material" includes corporate, product and issue advertisements of the issuer, interviews by its promoters, directors, duly authorized employees or representatives of the issuer, documentaries about the issuer or its promoters, periodical reports and press releases.
- (II) An issue advertisement shall be considered to be misleading, if it contains:
  - (a) Statements made about the performance or activities of the issuer without necessary explanatory or qualifying statements, which may give an exaggerated picture of such performance or activities.
  - (b) An inaccurate portrayal of past performance or its portrayal in a manner which implies that past gains or income will be repeated in the future.

#### **Copies of offer documents to be available to public [Regulation 61]**

- (1) The issuer and lead merchant bankers shall ensure that the contents of offer documents hosted on the websites as required in these regulations are the same as that of their printed versions as filed with the Registrar of Companies, Board and the stock exchanges.
- (2) The lead merchant bankers and the recognised stock exchange shall provide copies of the draft offer document and final offer document to the public as and when requested.
- (3) The lead merchant bankers or the recognised stock exchange may charge a reasonable sum for providing the copy of the offer document.

#### **Redressal of investor grievances [Regulation 62]**

The post-issue lead merchant bankers shall actively associate himself with post-issue activities such as allotment, refund, despatch and giving instructions to syndicate members, Self-Certified Syndicate Banks and other intermediaries and shall regularly monitor redressal of investor grievances arising therefrom.

#### **Appointment of Compliance Officer [Regulation 63]**

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.

**Explanation.—** For the purpose of this regulation, the term “securities laws” means the Companies Act, 1956, the Act, the Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996 and the rules and regulations made thereunder and the regulations, general or special orders, guidelines or circulars made or issued by the Board.

#### **Due diligence [Regulation 64]**

- (1) The lead merchant bankers shall exercise due diligence and satisfy himself about all the aspects of the issue including the veracity and adequacy of disclosure in the offer documents.
- (2) The lead merchant bankers shall call upon the issuer, its promoters or directors or in case of an offer for sale, the selling shareholders, to fulfill their obligations as disclosed by them in the offer document and as required in terms of these Regulations.
- (3) The post-issue merchant banker shall continue to be responsible for post-issue activities till the subscribers have received the securities certificates, credit to their demat account or refund of application moneys and the listing agreement is entered into by the issuer with the stock exchange and listing/trading permission is obtained.
- (4) The responsibility of the lead merchant banker shall continue even after the completion of issue process.

#### **Post-issue reports [Regulation 65]**

- (1) In public issue, the lead merchant banker shall submit final post-issue report as specified in Part C of Schedule XVI, within seven days of the date of finalization of basis of allotment or within seven days of refund of money in case of failure of issue.
- (2) In rights issue, the lead merchant banker shall submit post-issue reports as follows:-
  - (a) initial post issue report as specified in Part B of Schedule XVI, within three days of closure of the issue;
  - (b) final post issue report as specified in Part D of Schedule XVI, within fifteen days of the date of finalization of basis of allotment or within fifteen days of refund of money in case of failure of issue.
- (3) The lead merchant banker shall submit a due diligence certificate as per the format specified in Form G of Schedule VI, along with the final post issue report.

#### **Post-issue Advertisements [Regulation 66]**

- (1) The post-issue merchant banker shall ensure that advertisement giving details relating to over 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 or instructions to Self-Certified Syndicate Banks by the Registrar, date of despatch of certificates and date of filing of listing application, etc. is released within ten 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.
- (2) The post-issue merchant banker shall ensure that issuer, advisors, brokers or any other entity connected with the issue do not publish any advertisement stating that issue has been over subscribed or indicating investors' response to the issue, during the period when the public issue is still open for subscription by the public.



### **Co-ordination with Intermediaries [Regulation 67]**

- (1) The post-issue merchant banker shall maintain close co-ordination with the registrars to the issue and arrange to depute its officers to the offices of various intermediaries at regular intervals after the closure of the issue to monitor the flow of applications from collecting bank branches and/or Self Certified Syndicate Banks, processing of the applications including application form for ASBA and other matters till the basis of allotment is finalised, despatch of security certificates and refund orders are completed and securities are listed.
- (2) Any act of omission or commission on the part of any of the intermediaries noticed during such visits shall be duly reported to the Board.
- (3) In case there is a devolvement on underwriters, the merchant banker shall ensure that the notice for devolvement containing the obligation of the underwriters is issued within a period of ten days from the date of closure of the issue.
- (4) In case of under subscribed issues, the merchant banker shall furnish information in respect of underwriters who have failed to meet their underwriting devolvement to the Board in the format specified in Schedule XVII.
- (5) The post-issue merchant banker 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.

### **Audited financial statements in the offer document [Regulation 68]**

The merchant banker shall ensure that the information contained in the offer document and the particulars as per audited financial statements in the offer document are not more than six months old from the issue opening date.

### **Other responsibilities [Regulation 69]**

- (1) The post-issue merchant banker shall ensure that the despatch of refund orders, allotment letters and share certificates is done by way of registered post or certificate of posting, as may be applicable.
- (2) The post-issue merchant banker shall ensure payment of interest to the applicants for delayed despatch of allotment letters, refund orders, etc. as per the disclosure made in the offer document.
- (3) In case of absence of definite information about subscription figures, the issue shall be kept open for the required number of days to avoid any dispute, at a later date, by the underwriters in respect of their liability.
- (4) The issuer shall ensure that transactions in securities by the promoter and promoter group during the period between the date of registering the offer document with the Registrar of Companies or filing the letter of offer with the designated stock exchange, as the case may be and the date of closure of the issue shall be reported to the recognised stock exchanges where the specified securities of the issuer are listed, within twenty four hours of the transactions.

## PREFERENTIAL ISSUE

### Chapter VII not to apply in certain cases [Regulation 70]

- (1) The provisions of this Chapter shall not apply where the preferential issue of equity shares is made:
  - (a) pursuant to conversion of loan or option attached to convertible debt instruments in terms of sub-sections (3) and (4) of section 81 of the Companies Act, 1956;
  - (b) pursuant to a scheme approved by a High Court under sections 391 to 394 of the Companies Act, 1956;
  - (c) in terms of the rehabilitation scheme approved by the Board of Industrial and Financial Reconstruction under the Sick Industrial Companies (Special Provisions) Act, 1985:

Provided that the lock-in provisions of this Chapter shall apply to preferential issue of equity shares mentioned in clause (c).
- (2) The provisions of this Chapter relating to pricing and lock-in shall not apply to equity shares allotted to any financial institution within the meaning of sub-clauses (ia) and (ii) of clause (h) of section 2 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (51 of 1993).
- (3) The provisions of regulation 73 and regulation 76 shall not apply to a preferential issue of equity shares and compulsorily convertible debt instruments, whether fully or partly, where the Board has granted relaxation to the issuer in terms of regulation 29A of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, if adequate disclosures about the plan and process proposed to be followed for identifying the allottees are given in the explanatory statement to notice for the general meeting of shareholders.
- (4) The provisions of sub-regulation (2) of regulation 72 and sub-regulation (6) of regulation 78 shall not apply to a preferential issue of specified securities where the proposed allottee is a Mutual Fund registered with the Board or Insurance Company registered with Insurance Regulatory and Development Authority.

### Relevant date [Regulation 71]

For the purpose of this Chapter, "relevant date" means:

- (a) in case of preferential issue of equity shares, the date thirty days prior to the date on which the meeting of shareholders is held to consider the proposed preferential issue:
 

Provided that in case of preferential issue of equity shares pursuant to a scheme approved under the Corporate Debt Restructuring Framework of

Reserve Bank of India, the date of approval of the Corporate Debt Restructuring Package shall be the relevant date;
- (b) in case of preferential issue of convertible securities, either the relevant date referred to in clause (a) of this regulation or a date thirty days prior to the date on which the holders of the convertible securities become entitled to apply for the equity shares.

**Explanation.—** Where the relevant date falls on a Weekend/Holiday, the day preceding the Weekend/Holiday will be reckoned to be the relevant date.

### Frequently traded shares [Regulation 71A]

For the purpose of this Chapter, "frequently traded shares" means shares of an issuer, in which the traded turnover on any stock exchange during the twelve calendar months preceding the relevant date, is at least ten per cent of the total number of shares of such class of shares of the issuer.

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



### Conditions for preferential issue [Regulation 72]

- (1) A listed issuer may make a preferential issue of specified securities, if:
  - (a) a special resolution has been passed by its shareholders;
  - (b) all the equity shares, if any, held by the proposed allottees in the issuer are in dematerialised form;
  - (c) the issuer is in compliance with the conditions for continuous listing of equity shares as specified in the listing agreement with the recognised stock exchange where the equity shares of the issuer are listed;
  - (d) the issuer has obtained the Permanent Account Number of the proposed allottees.

- (2) The issuer shall not make preferential issue of specified securities to any person who has sold any equity shares of the issuer during the six months preceding the relevant date:

Provided that in respect of the preferential issue of equity shares and compulsorily convertible debt instruments, whether fully or partly, the Board may grant relaxation from the requirements of this sub-regulation, if the Board has granted relaxation in terms of regulation 29A of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 to such preferential allotment.

**Explanation.**—Where any person belonging to promoter(s) or the promoter group has sold his equity shares in the issuer during the six months preceding the relevant date, the promoter(s) and promoter group shall be ineligible for allotment of specified securities on preferential basis.

- (3) Where any person belonging to promoter(s) or the promoter group has previously subscribed to warrants of an issuer but 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.

### Disclosures [Regulation 73]

- (1) The issuer shall, in addition to the disclosures required under section 173 of the Companies Act, 1956 or any other applicable law, disclose the following in the explanatory statement to the notice for the general meeting proposed for passing-special resolution:
  - (a) the objects of the preferential issue;
  - (b) the proposal of the promoters, directors or key management personnel of the issuer to subscribe to the offer;
  - (c) the shareholding pattern of the issuer before and after the preferential issue;
  - (d) the time within which the preferential issue shall be completed;
  - (e) the identity of the natural persons who are the ultimate beneficial owner of the shares proposed to be allotted and/or who ultimately control, the proposed allottees, the percentage of post preferential issue capital that may be held by them and change in control, if any, in the issuer consequent to the preferential issue;  
  
Provided that if there is any listed company, mutual fund, bank or insurance company in the chain of ownership of the proposed allottee, no further disclosure will be necessary.
  - (f) an undertaking that the issuer shall re-compute the price of the specified securities in terms of the provision of these regulations where it is required to do so;

- (g) an undertaking that if the amount payable on account of there-computation of price is not paid within the time stipulated in these regulations, the specified securities shall continue to be locked-in till the time such amount is paid by the allottees.
- (2) The issuer shall place a copy of the certificate of its statutory auditor before the general meeting of the shareholders, considering the proposed preferential issue, certifying that the issue is being made in accordance with the requirements of these regulations.
- (3) Where specified securities are issued on a preferential basis to promoters, their relatives, associates and related entities for consideration other than cash, the valuation of the assets in consideration for which the equity shares are issued shall be done by an independent qualified valuer, which shall be submitted to the recognised stock exchanges where the equity shares of the issuer are listed:  
  
Provided that if the recognised stock exchange is not satisfied with the appropriateness of the valuation, it may get the valuation done by any other valuer and for this purpose it may obtain any information, as deemed necessary, from the issuer.
- (4) The special resolution shall specify the relevant date on the basis of which price of the equity shares to be allotted on conversion or exchange of convertible securities shall be calculated.

**Explanation.—** For the purpose of sub-regulation (3), the term 'valuer' has the same meaning as is assigned to it under clause (r) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Issue of Sweat Equity) Regulations, 2002.

#### **Allotment pursuant to special resolution [Regulation 74]**

- (1) Allotment pursuant to the special resolution shall be completed within a period of fifteen days from the date of passing of such resolution:  
  
Provided that where any application for exemption from the applicability of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 or any approval or permission by any regulatory authority or the Central Government for allotment is pending, the period of fifteen days shall be counted from the date of order on such application or the date of approval or permission, as the case may be.  
  
Provided further that where the Board has granted relaxation to the issuer in terms of regulation 29A of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, the preferential issue of equity shares and compulsorily convertible debt instruments, whether fully or partly, shall be made by it within such time as may be specified by the Board in its order granting the relaxation.  
  
Provided further that requirement of allotment within fifteen days shall not apply to allotment of specified securities on preferential basis pursuant to a scheme of corporate debt restructuring as per the corporate debt restructuring framework specified by the Reserve Bank of India.
- (2) If the allotment of specified securities is not completed within fifteen days from the date of special resolution, a fresh special resolution shall be passed and the relevant date for determining the price of specified securities under this Chapter will be taken with reference to the date of latter special resolution.
- (3) Notwithstanding anything contained in this regulation, where a preferential allotment is made that attracts an obligation to make an open offer for shares of the issuer under Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, and there is no offer made under sub-regulation (1) of regulation 20 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, the period of fifteen days shall be counted from the expiry of the period specified in sub-regulation (1) of regulation 20 or date of receipt of all statutory approvals required for the completion of an open offer under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

Provided that if an offer is made under sub-regulation (1) of regulation 20 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, the period of fifteen days shall be counted from the expiry of the offer period as defined in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

Provided further that the provisions of this sub-regulation shall not apply to an offer made under sub-regulation (1) of regulation 20 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, pursuant to a preferential allotment.

- (4) Allotment shall only be made in dematerialised form.

**Explanation.**—The requirement of allotment in dematerialised form shall also be applicable for the equity shares to be allotted pursuant to exercise of option attached to warrant or conversion of convertible securities.

### **Tenure of convertible securities [Regulation 75]**

The tenure of the convertible securities of the issuer shall not exceed eighteen months from the date of their allotment.

### **Pricing of equity shares – Frequently traded shares [Regulation 76]**

- (1) If the equity shares of the issuer have been listed on a recognised stock exchange for a period [twenty six weeks] or more as on the relevant date, the equity shares shall be allotted at a price not less than higher of the following:
  - (a) The average of the weekly high and low of the volume weighted average price of the related equity shares quoted on the recognised stock exchange during the twenty six weeks preceding the relevant date; or
  - (b) The average of the weekly high and low of the volume weighted average price of the related equity shares quoted on a recognised stock exchange during the two weeks preceding the relevant date.
- (2) If the equity shares of the issuer have been listed on a recognised stock exchange for a period of less than twenty six weeks as on the relevant date, the equity shares shall be allotted at a price not less than the higher of the following:
  - (a) the price at which equity shares were issued by the issuer in its initial public offer or the value per share arrived at in a scheme of arrangement under sections 230 to 240 of the Companies Act, 2013, pursuant to which the equity shares of the issuer were listed, as the case may be; or
  - (b) the average of the weekly high and low of the volume weighted average price of the related equity shares quoted on the recognised stock exchange during the period shares have been listed preceding the relevant date; or
  - (c) the average of the weekly high and low of the volume weighted average price of the related equity shares quoted on a recognised stock exchange during the two weeks preceding the relevant date.
- (3) Where the price of the equity shares is determined in terms of sub-regulation (2), such price shall be recomputed by the issuer on completion of twenty six weeks from the date of listing on a recognised stock exchange with reference to the average of the weekly high and low of the volume weighted average price of the related equity shares quoted on the recognised stock exchange during these twenty six weeks and if such recomputed price is higher than the price paid on allotment, the difference shall be paid by the allottees to the issuer.

- (4) Any preferential issue of specified securities, to qualified institutional buyers not exceeding five in number, shall be made at a price not less than the average of the weekly high and low of the closing prices of the related equity shares quoted on a recognised stock exchange during the two weeks preceding the relevant date.

**Explanation.-** For the purpose of this regulation, 'stock exchange' means any of the recognised stock exchanges in which the equity shares are listed and in which the highest trading volume in respect of the equity shares of the issuer has been recorded during the preceding twenty six weeks prior to the relevant date.

#### **Pricing of equity shares – Infrequently traded shares [Regulation 76A]**

Where the shares are not frequently traded, the price determined by the issuer shall take into account valuation parameters including book value, comparable trading multiples, and such other parameters as are customary for valuation of shares of such companies.

Provided that the issuer shall submit a certificate stating that the issuer is in compliance of this regulation, obtained from an independent merchant banker or an independent chartered accountant in practice having a minimum experience of ten years, to the stock exchange where the equity shares of the issuer are listed.

#### **Adjustments in pricing – Frequently or Infrequently traded shares [Regulation 76B]**

The price determined for preferential issue in accordance with regulation 76 or regulation 76A, shall be subject to appropriate adjustments, if the issuer :

- (a) makes an issue of equity shares by way of capitalization of profits or reserves, other than by way of a dividend on shares;
- (b) makes a rights issue of equity shares;
- (c) consolidates its outstanding equity shares into a smaller number of shares;
- (d) divides its outstanding equity shares including by way of stock split;
- (e) re-classifies any of its equity shares into other securities of the issuer;
- (f) is involved in such other similar events or circumstances, which in the opinion of the concerned stock exchange, requires adjustments.

#### **Payment of consideration [Regulation 77]**

- (1) Full consideration of specified securities other than warrants issued under this Chapter shall be paid by the allottees at the time of allotment of such specified securities:  
 Provided that in case of a preferential issue of specified securities pursuant to a scheme of corporate debt restructuring as per the corporate debt restructuring framework specified by the Reserve Bank of India, the allottee may pay the consideration in terms of such scheme.
- (2) An amount equivalent to at least twenty five per cent of the consideration determined in terms of regulation 76 shall be paid against each warrant on the date of allotment of warrants.
- (3) The balance seventy five per cent of the consideration shall be paid at the time of allotment of equity shares pursuant to exercise of option against each such warrant by the warrant holder.
- (4) In case the warrant holder does not exercise the option to take equity shares against any of the warrants held by him, the consideration paid in respect of such warrant in terms of sub-regulation (2) shall be forfeited by the issuer.
- (5) The issuer shall ensure that the consideration of specified securities, if paid in cash, shall be received from respective allottee's bank account.
- (6) The issuer shall submit a certificate of the statutory auditor to the stock exchange where the



equity shares of the issuer are listed stating that the issuer is in compliance of sub-regulation (5) and the relevant documents thereof are maintained by the issuer as on the date of certification.

### **Lock-in of specified securities [Regulation 78]**

- (1) The specified securities allotted on preferential basis to promoter or promoter group and the equity shares allotted pursuant to exercise of options attached to warrants issued on preferential basis to promoter or promoter group, shall be locked-in for a period of three years from the date of trading approval granted for specified securities or equity shares allotted pursuant to exercise of the option attached to warrant, as the case may be.

Provided that not more than twenty per cent of the total capital of the issuer shall be locked-in for three years from the date of trading approval.

Provided further that equity shares allotted in excess of the twenty per cent shall be locked-in for one year from the date of trading approval pursuant to exercise of options or otherwise, as the case may be.

- (2) The specified securities allotted on preferential basis to persons other than promoter and promoter group and the equity shares allotted pursuant to exercise of options attached to warrants issued on preferential basis to such persons shall be locked-in for a period of one year from the date of trading approval.
- (3) The lock-in of equity shares allotted pursuant to conversion of convertible securities other than warrants, issued on preferential basis shall be reduced to the extent the convertible securities have already been locked-in.
- (4) The equity shares issued on preferential basis pursuant to a scheme of corporate debt restructuring as per the Corporate Debt Restructuring framework specified by the Reserve Bank of India shall be locked-in for a period of one year from the date of trading approval.

Provided that partly paid up equity shares, if any, shall be locked-in from the date of trading approval and the lock-in shall end on the expiry of one year from the date when such equity shares become fully paid up.

- (5) If the amount payable by the allottee, in case of re-calculation of price under sub-regulation (3) of regulation 76 is not paid till the expiry of lock-in period, the equity shares shall continue to be locked-in till such amount is paid by the allottee.
- (6) The entire pre-preferential allotment shareholding of the allottees, if any, shall be locked-in from the relevant date upto a period of six months from the date of trading approval.

### **Explanation 1.-** For the purpose of this regulation:

- (I) The expression "total capital of the issuer" means:
  - (a) equity share capital issued by way of public issue or rights issue including equity shares issued pursuant to conversion of specified securities which are convertible; and
  - (b) specified securities issued on a preferential basis to promoter or promoter group.
- (II) (a) For the computation of twenty per cent of the total capital of the issuer, the amount of minimum promoters' contribution held and locked-in, in the past in terms of Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000 or these regulations shall be taken into account.
  - (b) The minimum promoters' contribution shall not again be put under fresh lock-in, even though it is considered for computing the requirement of twenty per cent of the total capital of the issuer, in case the said minimum promoters' contribution is free of lock-in at the time of the preferential issue.

**Explanation 2.** - For the purposes of this regulation, the date of trading approval shall mean the latest date when trading approval has been granted by all the recognised stock exchanges where the equity shares of the issuer are listed, for specified securities allotted as per the provisions of this Chapter.

**Transferability of locked-in specified securities and warrants issued on preferential basis [Regulation 79]**

- (1) Subject to the provisions of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, specified securities held by promoters and locked-in in terms of sub-regulation (1) of regulation 78 may be transferred among promoters or promoter group or to a new promoter or persons in control of the issuer :

Provided that lock-in on such specified securities shall continue for the remaining period with the transferee.

- (2) The specified securities allotted on preferential basis shall not be transferred by the allottee till trading approval is granted for such securities by all the recognised stock exchanges where the equity shares of the issuer are listed.

**QUALIFIED INSTITUTIONS PLACEMENT**

**Applicability [Regulation 80]**

The provisions of this Chapter shall apply to a qualified institutions placement made by a listed issuer.

**Definitions [Regulation 81]**

For the purpose of this Chapter:

- (a) "eligible securities" include equity shares, non-convertible debt instruments along with warrants and convertible securities other than warrants;
- (b) "qualified institutions placement" means allotment of eligible securities by a listed issuer to qualified institutional buyers on private placement basis in terms of these regulations;
- (c) "relevant date" means:
  - (i) in case of allotment of equity shares, the date of the meeting in which the board of directors of the issuer or the committee of directors duly authorised by the board of directors of the issuer decides to open the proposed issue;
  - (ii) in case of allotment of eligible convertible securities, either the date of the meeting in which the board of directors of the issuer or the committee of directors duly authorised by the board of directors of the issuer decides to open the issue of such convertible securities or the date on which the holders of such convertible securities become entitled to apply for the equity shares.

**Conditions for qualified institutions placement [Regulation 82]**

A listed issuer may make qualified institutions placement if it satisfies the following conditions:

- (a) a special resolution approving the qualified institutions placement has been passed by its shareholders;
- (b) 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 recognised stock exchange having nationwide trading terminal for a period of at least one year prior to the date of issuance of notice to its shareholders for convening the meeting to pass the special resolution:

Provided that where an issuer, being a transferee-company in a scheme of merger, demerger, amalgamation or arrangement sanctioned by a High Court under sections 391 to 394 of the Companies Act, 1956, 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;

- (c) it is in compliance with the requirement of minimum public shareholding specified in the Securities Contracts (Regulation) Rules, 1957;
- (d) in the special resolution, it shall be, among other relevant matters, specified that the allotment is proposed to be made through qualified institutions placement and the relevant date referred to in sub-clause (ii) of clause (c) of regulation 81 shall also be specified.

**Explanation.**—For the purpose of clause (b), “equity shares of the same class” shall have the same meaning as assigned to them in Explanation to sub-rule (4) of rule 19 of the Securities Contracts (Regulation) Rules, 1957.

#### **Appointment of merchant banker [Regulation 83]**

- (1) A qualified institutions placement shall be managed by merchant banker(s) registered with the Board who shall exercise due diligence.
- (2) The merchant banker shall, while seeking in-principle approval for listing of the eligible securities issued under qualified institutions placement, furnish to each stock exchange on which the same class of equity shares of the issuer are listed, a due diligence certificate stating that the eligible securities are being issued under qualified institutions placement and that the issuer complies with requirements of this Chapter.

#### **Placement document [Regulation 84]**

- (1) The qualified institutions placement shall be made on the basis of a placement document which shall contain all material information, including those specified in Schedule XVIII.
- (2) The placement document shall be serially numbered and copies shall be circulated only to select investors.
- (3) The issuer shall, while seeking in-principle approval from the recognised stock exchange, furnish a copy of the placement document, a certificate confirming compliance with the provisions of this Chapter along with any other documents required by the stock exchange.
- (4) The placement document shall also be placed on the website of the concerned stock exchange and of the issuer with a disclaimer to the effect that it is in connection with a qualified institutions placement and that no offer is being made to the public or to any other category of investors.

#### **Pricing [Regulation 85]**

- (1) The qualified institutions placement shall be made at a price not less than the average of the weekly high and low of the closing prices of the equity shares of the same class quoted on the stock exchange during the two weeks preceding the relevant date 2[:]

Provided that the issuer may offer a discount of not more than five per cent on the price so calculated for the qualified institutions placement, subject to approval of shareholders as specified in clause (&) of regulation 82 of these regulations

- (2) Where eligible securities are convertible into or exchangeable with equity shares of the issuer, the issuer shall determine the price of such equity shares allotted pursuant to such conversion or exchange taking the relevant date as decided and disclosed by it while passing the special resolution.
- (3) The issuer shall not allot partly paid up eligible securities:

Provided that in case of allotment of non-convertible debt instruments along with warrants, the allottees may pay the full consideration or part thereof payable with respect to warrants, at the time of allotment of such warrants:

Provided further that on allotment of equity shares on exercise of options attached to warrants, such equity shares shall be fully paid up.

- (4) The prices determined for qualified institutions placement shall be subject to appropriate adjustments if the issuer:
- (a) makes an issue of equity shares by way of capitalization of profits or reserves, other than by way of a dividend on shares;
  - (b) makes a rights issue of equity shares;
  - (c) consolidates its outstanding equity shares into a smaller number of shares;
  - (d) divides its outstanding equity shares including by way of stock split;
  - (e) re-classifies any of its equity shares into other securities of the issuer;
  - (f) is involved in such other similar events or circumstances, which in the opinion of the concerned stock exchange, requires adjustments.

**Explanation.**—For the purpose of sub-regulation (1), the term “stock exchange” means any of the recognized stock exchanges in which the equity shares of the same class of the issuer are listed and in which the highest trading volume in such equity shares has been recorded during the two weeks immediately preceding the relevant date.

#### **Restrictions on allotment [Regulation 86]**

- (1) Allotment under the qualified institutions placement shall be made subject to the following conditions:
- (a) Minimum of ten per cent of eligible securities shall be allotted to mutual funds:  
Provided that if the mutual funds do not subscribe to said minimum percentage or any part thereof, such minimum portion or part thereof may be allotted to other qualified institutional buyers;
  - (b) No allotment shall be made, either directly or indirectly, to any qualified institutional buyer who is a promoter or any person related to promoters of the issuer:  
Provided that a qualified institutional buyer who does not hold any shares in the issuer and who has acquired the said rights in the capacity of a lender shall not be deemed to be a person related to promoters.
  - (2) In a qualified institutions placement of non-convertible debt instrument along with warrants, an investor can subscribe to the combined offering of non-convertible debt instruments with warrants or to the individual securities, that is, either non-convertible debt instruments or warrants.
  - (3) The applicants in qualified institutions placement shall not withdraw their bids after the closure of the issue.

**Explanation.**—For the purpose of clause (b) of sub-regulation (1), a qualified institutional buyer who has any of the following rights shall be deemed to be a person related to the promoters of the issuer:

- (a) rights under a shareholders' agreement or voting agreement entered into with promoters or persons related to the promoters;
- (b) veto rights; or
- (c) right to appoint any nominee director on the board of the issuer.

#### **Minimum number of allottees [Regulation 87]**

- (1) The minimum number of allottees for each placement of eligible securities made under qualified

institutions placement shall not be less than:

- (a) two, where the issue size is less than or equal to two hundred and fifty crore rupees;
- (b) five, where the issue size is greater than two hundred and fifty crore rupees;

Provided that no single allottee shall be allotted more than fifty per cent of the issue size.

- (2) The qualified institutional buyers belonging to the same group or who are under same control shall be deemed to be a single allottee.

**Explanation.**—For the purpose of sub-regulation (2), the expression “qualified institutional buyers belonging to the same group” shall have the same meaning as derived from sub-section (11) of section 372 of the Companies Act, 1956.

#### **Validity of the special resolution [Regulation 88]**

- (1) Allotment pursuant to the special resolution referred to in clause (a) of regulation 82 shall be completed within a period of twelve months from the date of passing of the resolution.
- (2) The issuer shall not make subsequent qualified institutions placement until expiry of six months from the date of the prior qualified institutions placement made pursuant to one or more special resolutions.

#### **Restrictions on amount raised [Regulation 89]**

The aggregate of the proposed qualified institutions placement and all previous qualified institutions placements made by the issuer in the same financial year shall not exceed five times the net worth of the issuer as per the audited balance sheet of the previous financial year.

#### **Tenure [Regulation 90]**

The tenure of the convertible or exchangeable eligible securities issued through qualified institutions placement shall not exceed sixty months from the date of allotment.

#### **Transferability of eligible securities [Regulation 91]**

The eligible securities allotted under qualified institutions placement shall not be sold by the allottee for a period of one year from the date of allotment, except on a recognised stock exchange.

### **INSTITUTIONAL PLACEMENT PROGRAMME**

#### **Applicability [Regulation 91A]**

- (1) The provisions of this Chapter shall apply to issuance of fresh shares and or offer for sale of shares in a listed issuer for the purpose of achieving minimum public shareholding in terms of rules 19(2) (b) and 19A of the Securities Contracts (Regulation) Rules, 1957.
- (2) Unless otherwise specified, no provisions of these regulations shall be applicable to the institutional placement programme except for the following:—
  - (a) regulations 2, 5, 12, 18, 19, 47, 48, 51, 59, 60, 61, 64, 65, 66 and 68;
  - (b) clauses (a) and (b) of sub-regulation (2) of regulation 4;
  - (c) clause (b) of regulation 7.

#### **Definitions [Regulation 91B]**

For the purpose of this Chapter:

- (a) “eligible securities” shall mean equity shares of same class listed and traded in the stock exchange(s);
- (b) “eligible seller” include listed issuer, promoter/promoter group of listed issuer;

- (c) “institutional placement programme” means a further public offer of eligible securities by an eligible seller, in which the offer, allocation and allotment of such securities is made only to qualified institutional buyers in terms of this Chapter.

**Conditions for institutional placement programme [Regulation 91C]**

- (1) An institutional placement programme, may be made only after a special resolution approving the institutional placement programme has been passed by the shareholders of the issuer in terms of section 81(1 A) of the Companies Act, 1956.
- (2) No partly paid-up securities shall be offered.
- (3) The issuer shall obtain an in-principle approval from the stock exchange(s).

**Appointment of merchant banker [Regulation 91D]**

An institutional placement programme shall be managed by merchant banker(s) registered with the Board who shall exercise due diligence.

**Offer Document [Regulation 91E]**

- (1) The institutional placement programme shall be made on the basis of the offer document which shall contain all material information, including those specified in Schedule XVIII.
- (2) The issuer shall, simultaneously while registering the offer document with the Registrar of Companies, file a copy thereof with the Board and with the stock exchange(s) through the lead merchant banker.
- (3) The issuer shall file the soft copy of the offer document with the Board as specified in Schedule V, along with the fee as specified in Schedule IV.
- (4) The offer document shall also be placed on the website of the concerned stock exchange and of the issuer clearly stating that it is in connection with institutional placement programme and that the offer is being made only to the qualified institutional buyers.
- (5) The merchant banker shall submit to the Board a due diligence certificate as per Form A of Schedule VI, stating that the eligible securities are being issued under institutional placement programme and that the issuer complies with requirements of this Chapter.

**Pricing and allocation/allotment [Regulation 91F].**

- (1) The eligible seller shall announce a floor price or price band at least one day prior to the opening of institutional placement programme.
- (2) The eligible seller shall have the option to make allocation/allotment as per any of the following methods—
  - (a) proportionate basis;
  - (b) price priority basis; or
  - (c) criteria as mentioned in the offer document.
- (3) The method chosen shall be disclosed in the offer document.
- (4) Allocation/allotment shall be overseen by stock exchange before final allotment.

**Restrictions [Regulation 91G]**

- (1) The promoter or promoter group shall not make institutional placement programme if the promoter or any person who is part of the promoter group has purchased or sold the eligible securities during the twelve weeks period prior to the date of the programme and they shall not purchase or sell the eligible securities during the twelve weeks period after the date of the programme:

Provided that such promoter or promoter group may, within the period provided in sub-regulation (1), offer eligible securities held by them through institutional placement programme or offer for sale through stock exchange mechanism specified by the Board, subject to the condition that there shall be a gap of minimum two weeks between the two successive offer(s) and/or programme(s).

- (2) Allocation/allotment under the institutional placement programme shall be made subject to the following conditions:

- (a) Minimum of twenty five per cent of eligible securities shall be allotted to mutual funds and insurance companies:

Provided that if the mutual funds and insurance companies do not subscribe to said minimum percentage or any part thereof, such minimum portion or part thereof may be allotted to other qualified institutional buyers;

- (b) No allocation/allotment shall be made, either directly or indirectly, to any qualified institutional buyer who is a promoter or any person related to promoters of the issuer:

Provided that a qualified institutional buyer who does not hold any shares in the issuer and who has acquired the rights in the capacity of a lender shall not be deemed to be a person related to promoters.

- (3) The issuer shall accept bids using ASBA facility only.
- (4) The bids made by the applicants in institutional placement programme shall not be revised downwards or withdrawn.

**Explanation.-** For the purpose of clause (b) of sub-regulation (2), a qualified institutional buyer who has any of the following rights shall be deemed to be a person related to the promoters of the issuer:—

- (a) rights under a shareholders' agreement or voting agreement entered into with promoters or persons related to the promoters;
- (b) veto rights; or
- (c) right to appoint any nominee director on the board of the issuer.

#### **Minimum number of allottees [Regulation 91H]**

- (1) The minimum number of allottees for each offer of eligible Securities made under institutional placement programme shall not be less than ten;

Provided that no single allottee shall be allotted more than twenty five percent of the offer size.

- (2) The qualified institutional buyers belonging to the same group or who are under same control shall be deemed to be a single allottee.

**Explanation.-** For the purpose of sub-regulation (2), the expression "qualified institutional buyers belonging to the same group" shall have the same meaning as derived from sub-section (11) of section 372 of the Companies Act, 1956;

#### **Restrictions on size of the offer [Regulation 91-I]**

- (1) The aggregate of all the tranches of institutional placement programme made by the eligible seller shall not result in increase in public shareholding by more than ten per cent or such lesser per cent as is required to reach minimum public shareholding.
- (2) Where the issue has been oversubscribed, an allotment of not more than ten per cent of the offer size shall be made by the eligible seller.

**Period of Subscription and display of demand [Regulation 91J]**

- (1) The issue shall be kept open for a minimum of one day or maximum of two days.
- (2) The aggregate demand schedule shall be displayed by stock exchange(s) without disclosing the price.

**Withdrawal of offer [Regulation 91K]**

The eligible seller shall have, the right to withdraw the offer in cost it is not fully subscribed.

**Transferability of eligible securities [Regulation 91L]**

The eligible securities allotted under institutional placement programme shall not be sold by the allottee for a period of one year from the date of allocation/allotment, except on a recognised stock exchange

**BONUS ISSUE**

**Conditions for bonus issue [Regulation 92]**

Subject to the provisions of the Companies Act, 1956 or any other applicable law for the time being in force, a listed issuer may issue bonus shares to its members if:

- (a) it is authorised by its articles of association for issue of bonus shares, capitalisation of reserves, etc.:  
Provided that 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 association for capitalisation of reserve;
- (b) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
- (c) it has sufficient reason to believe that it has not defaulted in respect of the payment of statutory dues of the employees such as contribution to provident fund, gratuity and bonus;
- (d) the partly paid shares, if any outstanding on the date of allotment, are made fully paid up.

**Restriction on bonus issue [Regulation 93]**

- (1) No issuer shall make a bonus issue of equity shares [\*\*\*] unless it has made reservation of equity shares of the same class in favour of the holders of 2[\*\*\*] outstanding [compulsorily] convertible debt instruments 3[, if any in proportion to the convertible part thereof.
- (2) The equity shares so reserved for the holders of fully or partly/compulsorily/convertible debt instruments shall be issued at the time of conversion of such convertible debt instruments on the same terms or same proportion [of] which the bonus shares were issued.

**Bonus shares only against reserves, etc. if capitalised in cash [Regulation 94]**

- (1) The bonus issue shall be made out of free reserves built out of the genuine profits or securities premium collected in cash only and reserves created by revaluation of fixed assets shall not be capitalised for the purpose of issuing bonus shares.
- (2) Without prejudice to the provisions of sub-regulation (1), the bonus share shall not be issued in lieu of dividend.

**Completion of bonus issue [Regulation 95]**

- (1) An issuer, announcing a bonus issue after the approval of 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:



Provided that 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.

- (2) Once the decision to make a bonus issue is announced, the issue cannot be withdrawn.

## **ISSUE OF INDIAN DEPOSITORY RECEIPTS**

### **Applicability [Regulation 96]**

- (1) The provisions of this Chapter shall apply to an issue of Indian Depository Receipts (hereinafter referred to as "IDR") made in terms of section 605A of the Companies Act, 1956 and Companies (Issue of Indian Depository Receipts) Rules, 2004.
- (2) All provisions of these regulations shall be applicable in case of issue of IDR, except the disclosure requirements with respect to public issue and rights issue of specified securities as provided in these regulations and the following:
- (a) clauses (a), (b), (c) and (f) of sub-regulation (2) of regulation 4;
  - (b) sub-regulations (1), (2) and (3) of regulation 6;
  - (c) clauses (c), (d) and (e) of sub-regulation (1) of regulation 8;
  - (d) sub-regulations (2) and (3) of regulation 8;
  - (e) regulations 10, 16, 17, 19, 20, 21, 22, 23, 24, 26, 27, 31, 41, 42, '\*\*\*' 45, 47, 49 and 68;
  - (f) sub-regulation (2) of regulation 11;
  - (g) sub-regulation (2) of regulation 28;
  - (h) clauses (b) and (c) of regulation 29;
  - (i) Parts III and IV of Chapter III;
  - (ia) regulation 43, except sub-regulation (3) thereof;
  - (j) Chapter IV;
  - (K) sub-regulation (3) of regulation 65;
  - (l) Chapters VII, VIII and IX.
- (3) Further, the applicability of regulation 60 shall be as follows:
- (a) the applicability of sub-regulations (1) and (7) and Explanation II shall be restricted to any issue advertisements made in India or any research report circulated in India, pertaining to the IDR issue of the issuing company;
  - (b) the applicability of sub-regulations (2) and (3) shall be restricted to any public communications and publicity material issued or published in any media in India;
  - (c) the applicability of sub-regulations (5) and (6) shall be restricted to any material or information released in India and any issue advertisements and publicity materials issued or published in any media in India;
  - (d) the applicability of sub-regulation (13) shall be restricted to any product advertisement of an issuing company issued or published in any media in India;
  - (e) all other provisions of regulation 60 shall be applicable.

### **Eligibility [Regulation 97]**

An issuing company making an issue of IDR shall also satisfy the following:

- (a) the issuing company is listed in its home country;
- (b) the issuing company is not prohibited to issue securities by any regulatory body;
- (c) the issuing company has track record of compliance with securities market regulations in its home country.

**Explanation.—**For the purpose of this regulation, the term “home country” means the country where the issuing company is incorporated and listed.

#### **Conditions for issue of IDR [Regulation 98]**

An issue of IDR shall be subject to the following conditions:

- (a) issue size shall not be less than fifty crore rupees;
- (b) procedure to be followed by each class of applicant for applying shall be mentioned in the prospectus;
- (c) minimum application amount shall be twenty thousand rupees;
- (d) at least fifty per cent of the IDR issued shall be allotted to qualified institutional buyers on proportionate basis as per illustration given in Part C of Schedule XI;
- (e) the balance fifty per cent may be allocated among the categories of non-institutional investors and retail individual investors including employees at the discretion of the issuer and the manner of allocation shall be disclosed in the prospectus. Allotment to investors within a category shall be on proportionate basis :

Provided that at least thirty per cent of the IDRs being offered in the public issue shall be available for allocation to retail individual investors and in case of under subscription in retail individual investor category, spillover to other categories to the extent of under subscription may be permitted.

**Explanation.—** For the purpose of this regulation, “employee” shall mean a person who, —

- (a) is a resident of India, and
- (b) is a permanent and full-time employee or a director, whether whole time or part time, of the issuer or of the holding company or subsidiary company or of the material associate(s) of the issuer; whose financial statements are consolidated with the issuer's financial statements, working in India and does not include promoters and an immediate relative of the promoter (i.e., any spouse of that person, or any parent, brother, sister or child of the person or of the spouse);
- (f) at any given time, there shall be only one denomination of IDR of the issuing company.

#### **Minimum subscription [Regulation 99]**

- (1) For non-underwritten issues:
  - (a) If the issuing company does not receive the minimum subscription of ninety per cent of the offer through offer document on the date of closure of the issue, or if the subscription level falls below ninety per cent after the closure of issue on account of cheques having being returned unpaid or withdrawal of applications, the issuing company shall forthwith refund the entire subscription amount received.
  - (b) If the issuing company fails to refund the entire subscription amount within fifteen days from the date of the closure of the issue, it is liable to pay the amount with interest to the subscribers at the rate of fifteen per cent per annum for the period of delay.
- (2) For underwritten issues: If the issuing company does not receive the minimum subscription of ninety per cent of the offer through offer document including devolvement of underwriters within



sixty days from the date of closure of the issue, the issuing company shall forthwith refund the entire subscription amount received with interest to the subscribers at the rate of fifteen per cent per annum for the period of delay beyond sixty days.

### **Fungibility [Regulation 100]**

The Indian Depository Receipts shall not be automatically fungible into underlying equity shares of issuing company.

### **Filing of draft prospectus, due diligence certificates, payment of fees and issue advertisement for IDR [Regulation 101]**

- (1) The issuing company making an issue of IDR shall enter into an agreement with a merchant banker on the lines of format of agreement specified in Schedule II.
- (2) Where the issue is managed by more than one merchant banker, the rights, obligations and responsibilities, relating inter alia to disclosures, allotment, refund and underwriting obligations, if any, of each merchant banker shall be predetermined and disclosed in the prospectus on the lines of format as specified in Schedule I.
- (3) The issuing company shall file a draft prospectus with the Board through a merchant banker along with the requisite fee, as prescribed in Companies (Issue of Indian Depository Receipts) Rules, 2004.
- (4) The prospectus filed with the Board under this regulation shall also be furnished to the Board in a soft copy on the lines specified in Schedule V.
- (5) The lead merchant bankers shall:
  - (a) submit a due diligence certificate as per format given in Part C of Schedule XIX to the Board along with the draft prospectus;
  - (b) certify that all amendments, suggestions or observations made by the Board have been incorporated in the prospectus;
  - (c) submit a fresh due diligence certificate as per format given in Part C of Schedule XIX, at the time of filing the prospectus with the Registrar of the Companies;
  - (d) furnish a certificate as per format given in Part C of Schedule XIX, immediately before the opening of the issue, certifying that no corrective action is required on its part;
  - (e) furnish a certificate as per format given in Part C of Schedule XIX, after the issue has opened but before it closes for subscription.
- (6) The issuing company shall make arrangements for mandatory collection centres as specified in Schedule III.
- (7) The issuing company shall issue an advertisement in one English national daily circulation and one Hindi national daily newspaper with wide circulation, soon after receiving final observations, if any, on the publicly filed draft prospectus with the board, which shall be on the lines of the format and contain the ; as given in Part A of Schedule XIII.

### **Display of bid data [Regulation 102]**

The stock exchanges offering online bidding system for the book building process shall display on their website, the data pertaining to book built IDR issue, in the format specified in Part B(II) of Schedule XI, from the date of opening of the bids till at least three days after closure of bids.

### **Disclosures in prospectus and abridged prospectus [Regulation 103]**

- (1) The prospectus shall contain all material disclosures which are true, correct and adequate so as to enable the applicants to take an informed investment decision.

- (2) Without prejudice to the generality of sub-regulation (1), the prospectus shall contain:
  - (a) the disclosures specified in Schedule to Companies (Issue of Indian Depository Receipts) Rules, 2004, and
  - (b) the disclosures in the manner as specified in Part A of Schedule XIX.

#### **Post-issue reports [Regulation 104]**

- (1) The merchant banker shall submit post-issue reports to the Board in accordance with sub-regulation (2).
- (2) The post-issue reports shall be submitted as follows:
  - (a) initial post-issue reports on the lines of Parts A and B of Schedule XVI, within three days of closure of the issue;
  - (b) final post-issue report on the lines of Parts C and D of Schedule XVI, within fifteen days of the date of finalization of basis of allotment or within fifteen days of refund of money in case of failure of issue.

#### **Undersubscribed issue [Regulation 105]**

In case of undersubscribed issue of IDR, the merchant banker shall furnish information in respect of underwriters who have failed to meet their underwriting development to the Board on the lines of the format specified in Schedule XVII.

#### **Finalization of basis of allotment [Regulation 106]**

The executive director or managing director of the stock exchange, where the IDR are proposed to be listed, along with the post-issue lead merchant bankers and registrars to the issue shall ensure that the basis of allotment is finalised in a fair and proper manner in accordance with the allotment procedure as specified in Schedule XV.

### **RIGHTS ISSUE OF INDIAN DEPOSITORY RECEIPTS**

#### **Applicability [Regulation 106A]**

- (1) In addition to compliance with Chapter X, a listed issuer offering IDR through a rights issue shall satisfy the conditions specified in this Chapter at the time of filing the offer document:  
 Provided that the provisions of the following regulations shall not be applicable in case of rights issue of IDRs:
  - (a) clauses (a), (b), (c), (d) and (e) of regulation 98;
  - (b) regulation 102; and
  - (c) regulation 103.
- (2) Every listed issuer offering IDRs through a rights issue shall prepare the offer document in accordance with the home country requirements along with an addendum containing disclosures as specified in Part A of Schedule XXI and regulation 106F and file the same with the Board and the stock exchanges on which the IDRs of the issuer are listed.

#### **Eligibility [Regulation 106B]**

No issuer shall make a rights issue of IDRs:

- (a) if at the time of undertaking the rights issue, the issuer is in breach of ongoing material obligations under the IDR Listing Agreement 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; and

- (b) unless it has made an application to all the recognised 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.

#### **Renunciation by an IDR holder [Regulation 106C]**

Unless the laws of the home jurisdiction of the issuer company otherwise provide, the rights offering shall be deemed to include a right exercisable by the person concerned to renounce the IDRs offered to the IDR holder in favour of any other person subject to applicable laws and the same shall be disclosed in the offer document.

#### **Depository [Regulation 106D]**

The domestic depository shall, in accordance with the depository agreement executed with the issuer at the time of initial offering of IDRs, take such steps as are necessary to enable the IDR holders to have entitlements under the rights offering and issue additional IDRs to such IDR holders, distribute the rights to the IDR Holders/renounces or arrange for the IDR holders/renounces to subscribe for any additional rights which are available due to lack of take-up by other holders of underlying shares.

#### **Record Date [Regulation 106E]**

- (1) A listed issuer making a rights issue of IDRs shall in accordance with provisions of the listing agreement, announce a record date for the purpose of determining the shareholders eligible to apply for IDRs in the proposed rights issue.
- (2) if the issuer withdraws the rights issue after announcing the record date, it shall notify the Board about the same and shall notify the same in 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 principal office of the issuer is situated in India. If the issuer withdraws the rights issue after announcing the record, date, it shall not make an application for offering of IDRs on a rights basis for a period of twelve months from the said record, date.

#### **Disclosures in the offer document and the addendum for the rights offering [Regulation 106F]**

- (1) The offer document for the rights offering shall contain disclosures as required under the home country regulations of the issuer.
- (2) Apart from the disclosures as required under the home country regulations, an additional wrap (addendum to offer document) shall be attached to the offer document to be circulated in India containing information as specified in Part A of Schedule XXI and other instructions as to the procedures and process to be followed with respect to rights issue of IDRs in India.
- (3) Without prejudice to the generality of sub-regulations (1) and (2), the offer document and the addendum attached with it, shall contain all material information, which are true, correct and adequate, so as to enable the applicants to take an informed investment decision.

#### **Filing of draft offer document and the addendum for rights offering [Regulation 106G]**

- (1) The issuer shall appoint one or more merchant bankers, one of whom shall be a lead merchant banker and shall also appoint other intermediaries, in consultation with the lead merchant banker, to carry out the obligations relating to the issue.
- (2) The issuer shall, through the lead merchant banker, file the draft offer document prepared in accordance with the home country requirements along with an addendum containing disclosures as specified in Part A of Schedule XXI with the Board, as a confidential filing accompanied with fees as specified in Part A of Schedule IV.
- (3) The Board may specify changes or issue observations, if any, on the draft offer document and the addendum within thirty days or from the following, dates, whichever is later:

- (a) the, date of receipt of the draft offer document prepared in accordance with the home country requirements along with an addendum under sub-regulation (2); or
  - (b) the, date of receipt of satisfactory reply from the lead merchant bankers, where the Board has sought any clarification or additional information from them; or
  - (c) the, date of receipt of clarification or information from any regulator or agency, where the Board has sought any clarification or information from such regulator or agency; or
  - (d) the date of receipt of a copy of in-principle approval letter issued by the recognised stock exchanges.
- (4) If the Board specifies changes or issues observations on the draft offer document and the addendum under sub-regulation (3), the issuer and the merchant banker shall file the revised draft offer document and the updated addendum after incorporating the changes suggested or specified by the Board.
- (5) The issuer shall also submit an undertaking from the Overseas Custodian and Domestic Depository addressed to the issuer, to comply with their obligations with respect to the said rights issue under their respective agreements entered into between them, along with the offer document.
- (6) The issuer shall ensure that the Compliance Officer, in charge of ensuring compliance with the obligations under this Chapter, functions from within the territorial limits of India.

#### **Fast track issue [Regulation 106H]**

- (1) Nothing contained in sub-regulations (1), (2), (3) and (4) of regulation 106G shall apply, if the issuer satisfies the following conditions:
- (a) the issuer is in compliance in all material respects with the provisions of deposit agreement and the provisions of listing agreements (or listing conditions) applicable in all the jurisdictions wherever the issuer is listed, for a period of at least three years immediately preceding the date of filing of the offer document, and a certification to this effect is provided by the issuer;
  - (b) the offer document for the rights offering of the securities of the issuer has been filed and reviewed by the securities regulator in the home country of the issuer;
  - (c) there are no pending show-cause notices or prosecution proceedings against the issuer or its promoters, where applicable, or whole time directors on the reference date by the Board or the regulatory authorities in its home country restricting them from accessing the capital markets; and
  - (d) the issuer has redressed at least ninety five per cent of the complaints received from the IDR holders before the end of the three months period immediately preceding the month of date of filing the letter of offer with the designated stock exchange.
- (2) Where the conditions in sub-regulation (1) are satisfied, the issuer may opt for rights issue of IDRs by filing a copy of the offer document prepared in accordance with the home country requirements along with an addendum containing disclosures as specified in Part A of Schedule XXI with the Board for record purposes, before filing the same with the recognised stock exchanges.

#### **Dispatch of abridged letter of offer and application form [Regulation 106I].**

- (1) The abridged letter of offer, containing disclosures as specified in Part B of Schedule XXI, for a rights offering, along with application form, shall be dispatched through registered post or speed post to all the eligible IDR holders at least three days before the date of opening of the issue and shall be made available on the website of the issuer with appropriate access restrictions at the same time it is made available to the holders of its equity shares:



Provided that a hard copy of the offer document for a rights offering along with the addendum shall be made available at the principal office of the issuer or lead merchant banker to any existing IDR holder who has made a request in this regard,

- (2) The eligible IDR holders who have not received the application form may apply in writing on a plain paper to the domestic depository, along with the requisite application money within the time frame for acceptance.
- (3) The eligible IDR holders making an application otherwise than on the application form shall not renounce their rights and shall not utilize the application form for any purpose including renunciation even if it is received subsequently.
- (4) Where any eligible IDR holder makes an application on an application form as well as on plain paper, such application is liable to be rejected.
- (5) The issue price and the ratio shall be decided simultaneously with record date in accordance with the home country regulations.

#### **Period of subscription [Regulation 106J]**

A rights issue shall be open for subscription in India for a period as applicable under the laws of its home country but in no case less than 10 days.

#### **Pre-Issue Advertisement for rights issue [Regulation 106K]**

- (1) The issuer shall issue an advertisement for the rights issue disclosing the following:
  - (a) the date of completion of dispatch of the abridged letter of offer and the application form;
  - (b) the centres other than principal office of the issuer in India where the eligible IDR holders may obtain duplicate copies of the application forms in case they do not receive the application form within a reasonable time after opening of the rights issue;
  - (c) a statement that if the eligible IDR holders have neither received the original application forms nor they are in a position to obtain the duplicate forms, they may make application in writing on a plain paper to subscribe to the rights issue;
  - (d) a format to enable the eligible IDR holders, to make the application on a plain paper specifying therein necessary particulars such as name, address, ratio of rights issue, issue price, number of IDRs held, ledger folio numbers, depository participant ID, client ID, number of IDRs entitled and applied for, amount to be paid along with application, and particulars of cheque, etc., to be drawn in favour of the issuer's account;
  - (e) a statement that the applications can be directly sent by the eligible IDR holders through registered post together with the application moneys to the issuer's designated official at the address given in the advertisement;
  - (f) a statement to the effect that if the eligible IDR holder makes an application on plain paper and also on application form both his applications shall be liable to be rejected at the option of the issuer.
- (2) The advertisement shall be made 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 principal office of the issuer is situated in India at least three days before the date of opening of the issue.

#### **Utilization of funds raised in rights issue [Regulation 106L]**

- (1) The issuer shall utilize funds raised in relation to the IDRs pursuant to the rights offering only upon completion of the allotment process.

**ISSUE OF SPECIFIED SECURITIES BY SMALL AND MEDIUM ENTERPRISES****Applicability [Regulation 106M]**

- (1) An issuer whose post-issue face value capital does not exceed ten crore rupees shall issue its specified securities in accordance with provisions of this Chapter.
- (2) An issuer, whose post-issue face value capital is more than ten crore rupees and up to twenty five crore rupees, may also issue specified securities in accordance with provisions of this Chapter.
- (3) The provisions of these regulations, in respect of the matters not specifically dealt or excluded under this Chapter, shall mutatis mutandis apply to any issue of specified securities under this Chapter :

Provided that provisions of sub-regulations (1), (2) and (3) of regulation 6, regulation 7, regulation 8, regulation 9, regulation 10, regulation 25, regulation 26, regulation 27 and sub-regulation (1) of regulation 49 of these regulations shall not apply to an issue of specified securities made under this Chapter.

**Definitions [Regulation 106N]**

- (1) In this Chapter, unless the context otherwise requires,—
  - (a) “Main Board” means a recognized stock exchange having nationwide trading terminals, other than SME exchange;
  - (b) “nominated investor” means a qualified institutional buyer or private equity fund, who enters into an agreement with the merchant banker to subscribe to the issue in case of under-subscription or to receive or deliver the specified securities in the market-making process.  
**Explanation.**—“private equity fund” means a fund registered with any regulatory authority or a fund established by any person registered with any regulatory authority;
  - (c) “SME exchange” means a trading platform of a recognized stock exchange having nationwide trading terminals permitted by the Board to list the specified securities issued in accordance with this Chapter and includes a stock exchange granted recognition for this purpose but does not include the Main Board.
- (2) All other words and expression used in this Chapter but not defined under sub-regulation (1) shall derive their meaning from regulation 2 of these regulations.

**Filing of offer document and due diligence certificate [Regulation 106 O]**

- (1) The issuer making a public issue or rights issue of specified securities under this Chapter shall not file the draft offer document with the Board:  
 Provided that the issuer shall file a copy of the offer document with the Board through a merchant banker, simultaneously with the filing of the prospectus with the SME exchange and the Registrar of Companies or letter of offer with the SME Exchange:  
 Provided further that the Board shall not issue any observation on the offer document.
- (2) The merchant banker shall submit a due-diligence certificate as per Form A of Schedule VI including additional confirmations as provided in Form H of Schedule VI along with the offer document of the Board.
- (3) The offer document shall be displayed from the date of filing in terms of sub-regulation (1) on the websites of the Board, the issuer, the merchant banker and the SME exchange where the specified securities offered through the offer document are proposed to be listed.

**Underwriting by merchant bankers and underwriters [Regulation 106P]**

- (1) The issue made under this Chapter shall be hundred per cent under written.

**Explanation.—** The underwriting under this regulation shall be for the entire hundred per cent of the offer through offer document and shall not be restricted up to the minimum subscription level.

- (2) The merchant banker/s shall underwrite at least fifteen per cent of the issue size on his/their own account/s.
- (3) The issuer in consultation with merchant banker may appoint underwriters in accordance with Securities and Exchange Board of India (Underwriters) Regulations, 1993 and the merchant banker may enter into an agreement with nominated investor indicating therein the number of specified securities which they agree to subscribe at issue price in case of under-subscription.
- (4) If other underwriters fail to fulfill their underwriting obligations or other nominated investors fail to subscribe to unsubscribed portion, the merchant banker shall fulfill the underwriting obligations.
- (5) The underwriters other than the merchant banker and the nominated investors, who have entered into an agreement for subscribing to the issue in case of under-subscription, shall not subscribe to the issue made under this Chapter in any manner except for fulfilling their obligations under their respective agreements with the merchant banker in this regard.
- (6) All the underwriting and subscription arrangements made by the merchant banker shall be disclosed in the offer document.
- (7) The merchant banker shall file an undertaking to the Board that the issue has been hundred per cent underwritten along with the list of underwriters and nominated investors indicating the extent of underwriting or subscriptions commitment made by them, one day before the opening of issue.

#### **Minimum Application Value [Regulation 106Q]**

The issuer shall stipulate in the offer document, the minimum application size in terms of number of specified securities which shall not be less than one lakh rupees per application.

#### **Minimum Number of Allottees [Regulation 106R]**

No allotment shall be made pursuant to any initial public offer made under this Chapter, if the number of prospective allottees is less than fifty.

#### **Listing of specified securities [Regulation 106S]**

- (1) Specified securities issued in accordance with this Chapter shall be listed on SME exchange.
- (2) Where any listed issuer issues specified securities in accordance with provisions of this Chapter it shall migrate the specified securities already listed on any recognized stock exchange/s to the SME exchange.

#### **Migration to SME exchange [Regulation 106T]**

A listed issuer whose post-issue face value capital is less than twenty five crore rupees may migrate its specified securities to SME exchange if its shareholders approve such migration by passing a special resolution through postal ballot to this effect and if such issuer fulfils the eligibility criteria for listing laid down by the SME exchange :

Provided that the special resolution shall be acted upon if and only if the votes cast by shareholders other than promoters in favour of the proposal amount to at least two times the number of votes cast by shareholders other than promoter shareholders against the proposal.

#### **Migration to Main Board [Regulation 106U]**

- (1) An issuer, whose specified securities are listed on a SME Exchange and whose post issue face value capital is more than ten crore rupees and up to twenty five crore rupees, may migrate its specified securities to Main Board if its shareholders approve such migration by passing a special resolution through postal ballot to this effect and if such issuer fulfils the eligibility criteria for listing laid down by the Main Board:

Provided that the special resolution shall be acted upon if and only if the votes cast by shareholder other than promoters in favour of the proposal amount to at least two times the number of votes cast by shareholders other than promoter shareholders against the proposal.

- (2) Where the post issue face value capital of an issuer listed on SME exchange is likely to increase beyond twenty five crore rupees by virtue of any further issue of capital by the issuer by way of rights issue, preferential issue, bonus issue, etc. the issuer shall migrate its specified securities listed on SME exchange to Main Board and seek listing of specified securities proposed to be issued on the Main Board subject to the fulfillment of the eligibility criteria for listing of specified securities laid down by the Main Board : Provided that no further issue of capital by the issuer shall be made unless—
  - (a) the shareholders of the issuer have approved the migration by passing a special resolution through postal ballot wherein the votes cast by shareholders other than promoters in favour of the proposal amount to at least two times the number of votes cast by shareholders other than promoter shareholders against the proposal;
  - (b) the issuer has obtained in-principle approval from the Main Board for listing of its entire specified securities on it.

#### **Market Making [Regulation 106V]**

- (1) The merchant banker shall ensure compulsory market, making through the stock brokers of SME exchange in the manner specified by the Board for a minimum period of three years from the date of listing of specified securities issued under this Chapter on SME exchange or from the date of migration from Main Board in terms of regulation 2[106T], as the case may be.
- (2) The merchant banker may enter into agreement with nominated investors for receiving or delivering the specified securities in the market making subject to the prior approval by the SME exchange where the specified securities are proposed to be listed.
- (3) The issuer shall disclose the details of arrangement of market making in the offer document.
- (4) The specified securities being bought or sold in the process of market making may be transferred to or from the nominated investor with whom the merchant banker has entered into an agreement for the market making :

Provided that the inventory of the market maker, as on the date of allotment of the specified securities, shall be at least five per cent of the specified securities proposed to be listed on SME exchange.

- (5) The market maker shall buy the entire shareholding of a shareholder of the issuer in one lot, where value of such shareholding is less than the minimum contract size allowed for trading on the SME exchange :

Provided that market maker shall not sell in lots less than the minimum contract size allowed for trading on the SME exchange.

- (6) Market maker shall not buy the shares from the promoters or persons belonging to promoter group of the issuer or any person who has acquired shares from such promoter or person belonging to promoter group, during the compulsory market making period laid down under sub-regulation (1).
- (7) The promoters' holding shall not be eligible for offering to the market maker under this Chapter during the period specified in sub-regulation (1):

Provided that the promoters' holding which is not locked-in as per these regulations can be traded with prior permission of the SME exchange, in the manner specified by the Board.

- (8) Subject to the agreement between the issuer and the merchant banker/s, the merchant banker/s who have the responsibility of market making may be represented on the board of the issuer.

## **LISTING ON INSTITUTIONAL TRADING PLATFORM**

### **Applicability [Regulation 106W]**

- (1) The provisions of this chapter shall apply to entities which seek listing of their specified securities exclusively on the institutional trading platform either pursuant to a public issue or otherwise.
- (2) The provisions of these regulations, in respect of the matters not specifically dealt or excluded under this Chapter, shall apply mutatis mutandis to any listing of specified securities under this Chapter:

Provided that the provisions of sub-regulation (4) of regulation 4, sub-regulations (1) and (2) of regulation 26 of these regulations shall not apply to listing of specified securities made under this Chapter.

- (3) The institutional trading platform shall be accessible to institutional investors and non-institutional investors.

### **Definitions [Regulation 106X]**

- (1) In this chapter, unless the context otherwise requires,-
  - (a) "institutional trading platform" means the trading platform for listing and trading of specified securities of entities that comply with the eligibility criteria specified in regulation 106Y;
  - (b) "institutional investor" means:
    - (i) qualified institutional buyer; or
    - (ii) family trust or systematically important NBFCs registered with Reserve Bank of India or intermediaries registered with the Board, all with net-worth of more than five hundred crore rupees, as per the last audited financial statements;
  - (c) "persons acting in concert" shall have the same meaning as assigned to it under regulation 2(1)(q) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.
- (2) All other words and expressions used in this Chapter but not defined under sub-regulation (1) shall derive their meaning from regulation 2 of these regulations.

### **Eligibility [Regulation 106Y]**

- (1) The following entities shall be eligible for listing on the institutional trading platform,-
  - (a) an entity which is intensive in the use of technology, information technology, intellectual property, data analytics, bio-technology or nano-technology to provide products, services or business platforms with substantial value addition and at least twenty five per cent of its pre-issue capital is held by qualified institutional buyer(s) as on the date of filing of draft information document or draft offer document with the Board, as the case may be; or
  - (b) any other entity in which at least fifty per cent of the pre-issue capital is held by qualified institutional buyers as on the date of filing of draft information document or draft offer document with the Board, as the case may be.
- (2) No person, individually or collectively with persons acting in concert, shall hold twenty five per cent or more of the post-issue share capital in an entity specified in sub-regulation (1).

### **Listing without public issue [Regulation 106Z]**

- (1) An entity seeking listing of its specified securities without making a public issue shall file a draft information document along with necessary documents with the Board in accordance with these regulations along with fee as specified in Schedule IV of these regulations.
- (2) The draft information document shall contain the disclosures as specified for draft offer document in these regulations.

- (3) Regulations relating to the following shall not be applicable in case of listing without public issue:
  - (i) allotment;
  - (ii) issue opening / closing;
  - (iii) advertisement;
  - (iv) underwriting;
  - (v) sub-regulation (5) of regulation 26;
  - (vi) pricing;
  - (vii) dispatch of issue material;
  - (viii) and other such provisions related to offer of specified securities to public.
- (4) The entity shall obtain in-principle approval from the recognised stock exchanges on which it proposes to get its specified securities listed.
- (5) The entity shall list its specified securities on the recognised stock exchange(s) within thirty days:
  - (a) from the date of issuance of observations by the Board; or
  - (b) from the expiry of the period stipulated in sub-regulation (2) of regulation 6, if the Board has not issued any such observations.
- (6) The entity which has received in-principle approval from the recognised stock exchange for listing of its specified securities on the institutional trading platform, without making a public issue, shall be deemed to have been waived by the Board under sub-rule (7) of rule 19 from the requirement of clause (b) of sub-rule (2) of rule 19 of Securities Contracts (Regulation) Rules, 1957 for the limited purpose of listing on the institutional trading platform.
- (7) Provisions relating to minimum public shareholding shall not apply to entities listed on institutional trading platform without making a public issue.
- (8) The draft and final information document shall be approved by the board of directors of the entity and shall be signed by all directors, the Chief Executive Officer, i.e., the Managing Director or Manager within the meaning of the Companies Act, 2013 and the Chief Financial Officer, i.e., the Whole-time Finance Director or any other person heading the finance function and discharging that function.
- (9) The signatories shall also certify that all disclosures made in the information document are true and correct.
- (10) In case of mis-statement in the information document or any omission therein, any person who has authorized the issue of information document shall be liable in accordance with the provisions of the SEBI Act, 1992 and regulations made thereunder.

#### **Listing pursuant to public issue [Regulation 106ZA]**

- (1) An entity seeking issue and listing of its specified securities shall file a draft offer document along with necessary documents with the Board in accordance with these regulations along with fees as specified in Schedule IV of these regulations.
- (2) The minimum application size shall be ten lakh rupees.
- (3) The number of allottees shall be more than two hundred.
- (4) The allocation in the net offer to public category shall be as follows:
  - (a) seventy-five per cent to institutional investors:  
Provided that there shall be no separate allocation for Anchor Investors;
  - (b) twenty-five per cent to non-institutional investors;





- (5) Any under-subscription in the non-institutional investor category shall be available for subscription under the institutional investors' category.
- (6) The allotment to institutional investors may be on a discretionary basis whereas the allotment to non-institutional investors shall be on a proportionate basis.
- (7) The mode of allotment to institutional investors, i.e., whether discretionary or proportionate, shall be disclosed prior to or at the time of filing of the Red Herring Prospectus.
- (8) In case of discretionary allotment to institutional investors, no institutional investor shall be allotted more than ten per cent of the issue size.
- (9) The offer document shall disclose the broad objects of the issue.
- (10) The basis of issue price may include disclosures, except projections, as deemed fit by the issuers in order to enable investors to take informed decisions and the disclosures shall suitably caution the investors about basis of valuation.

#### **Lock-in [Regulation 106ZB]**

- (1) The entire pre-issue capital of the shareholders shall be locked-in for a period of six months from the date of allotment in case of listing pursuant to public issue or date of listing in case of listing without public issue:

Provided that nothing contained in this regulation shall apply to:

- (i) equity shares allotted to employees under an employee stock option or employee stock purchase scheme of the entity prior to the initial public offer, if the entity has made full disclosures with respect to such options or scheme in accordance with Part A of Schedule VIII;
- (ii) equity shares held by a venture capital fund or alternative investment fund of Category I or a foreign venture capital investor:

Provided that such equity shares shall be locked in for a period of at least one year from the date of purchase by the venture capital fund or alternative investment fund or foreign venture capital investor.

- (iii) equity shares held by persons other than promoters, continuously for a period of at least one year prior to the date of listing in case of listing without public issue:

**Explanation.-** For the purpose of clause (ii) and (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 the convertible securities shall be deemed to be fully paid-up, if the entire consideration payable thereon has been paid at the time of their conversion.

- (2) The specified securities held by promoters and locked-in may be pledged with any scheduled commercial bank or public financial institution as collateral security for loan granted by such bank or institution if the pledge of specified securities is one of the terms of sanction of the loan.
- (3) The specified securities that are locked-in may be transferable in accordance with regulation 40 of these regulations.
- (4) All specified securities allotted on a discretionary basis shall be locked-in in accordance with the requirements for lock-in by Anchor Investors on main board of the stock exchange, as specified under clause 10(j) in Part A of Schedule XI.

#### **Trading lot [Regulation 106ZC]**

The minimum trading lot shall be ten lakh rupees.

**Exit of entities listed without making a public issue [Regulation 106ZD]**

- (1) An entity whose specified securities are listed on the institutional trading platform without making a public issue may exit from that platform, if-
  - (a) its shareholders approve such exit by passing a special resolution through postal ballot where ninety per cent of the total votes and the majority of non-promoter votes have been cast in favor of such proposal; and
  - (b) the recognised stock exchange where its shares are listed approve of such an exit.
- (2) The recognised stock exchange may delist the specified securities of an entity listed without making a public issue upon non-compliance of the conditions of listing and in the manner as specified by the stock exchange.
- (3) No entity promoted by promoters and directors of an entity delisted under sub-regulation (2), shall be permitted to list on institutional trading platform for a period of five years from the date of such delisting:

Provided that the provisions of this regulation shall not apply to another entity promoted by the independent directors of such a delisted entity.

**Migration to main board [Regulation 106ZE]**

An entity that has listed its specified securities on a recognised stock exchange in accordance with the provisions of this Chapter may at its option migrate to the main board of that recognised stock exchange after expiry of three years from the date of listing subject to compliance with the eligibility requirements of the stock exchange.

**Repeal and saving [Regulation 106ZF]**

The provisions of Chapter XC and all directions, guidelines, instructions or circulars, issued by the Board as applicable to small and medium enterprises which are listed on the institutional trading platform, as on the date of commencement of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Fourth Amendment) Regulations, 2015 shall continue to remain in force for the period such companies are listed on the institutional trading platform or till such time as specified by the Board, whichever is earlier, as if Chapter XC had not been repealed.

**Explanation.-** Under this Chapter, the phrases 'pre-issue' and 'post-issue', wherever they occur shall be construed as 'pre-listing' and 'post-listing', respectively, in case of listing without public issue.

**MISCELLANEOUS****Directions by the Board [Regulation 107]**

Without prejudice to the power under sections 11, 11A, 11B, 11D, sub-section (3) of section 12, Chapter VIA and section 24 of the Act or section 621 of the Companies Act, 1956, the Board may either suo motu or on receipt of information or on completion or pendency of any inspection, inquiry or investigation, in the interests of investors or the securities market, issue such directions or orders as it deems fit including any or all of the following:

- (a) directing the persons concerned not to access the securities market for a specified period;
- (b) directing the person concerned to sell or divest the securities;
- (c) any other direction which Board may deem fit and proper in the circumstances of the case:

Provided that the Board shall, either before or after issuing such direction or order, give a reasonable opportunity of being heard to the person concerned:



Provided further that if any interim direction or order is required to be issued, the Board may give post-decisional hearing to the person concerned.

#### **Power to remove difficulty [Regulation 108]**

In order to remove any difficulties in the application or interpretation of these regulations, the Board may issue clarifications through guidance notes or circulars after recording reasons in writing.

#### **Power to relax strict enforcement of the regulations [Regulation 109]**

The Board may, in the interest of investors or for the development of the securities market, relax the strict enforcement of any requirement of these regulations, if the Board is satisfied that:

- (a) the requirement is procedural in nature; or
- (b) any disclosure requirement is not relevant for a particular class of industry or issuer; or
- (c) the non-compliance was caused due to factors beyond the control of the issuer.

#### **Amendments to other regulations [Regulation 110]**

On and from the commencement of these regulations, the regulations mentioned in Schedule XX shall stand amended to the extent specified therein.

#### **Repeal and Savings [Regulation 111]**

- (1) On and from the commencement of these regulations, the Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000 shall stand rescinded.
- (2) Notwithstanding such rescission:
  - (a) anything done or any action taken or purported to have been done or taken including observation made in respect of any draft offer document, any enquiry or investigation commenced or show cause notice issued in respect of the said Guidelines shall be deemed to have been done or taken under the corresponding provisions of these regulations;
  - (b) any offer document, whether draft or otherwise, filed or application made to the Board under the said Guidelines and pending before it shall be deemed to have been filed or made under the corresponding provisions of these regulations.

### 3.4 CORPORATE GOVERNANCE OF LISTING AGREEMENT

#### Applicability of Clause 49

The Clause 49 of the Listing Agreement shall be applicable to all companies whose equity shares are listed on a recognized stock exchange. However, compliance with the provisions of Clause 49 shall not be mandatory, for the time being, in respect of the following class of companies:

- (a) Companies having paid up equity share capital not exceeding ₹10 crore and Net Worth not exceeding ₹25 crore, as on the last day of the previous financial year;

Provided that where the provisions of Clause 49 becomes applicable to a company at a later date, such company shall comply with the requirements of Clause 49 within six months from the date on which the provisions became applicable to the company.

- (b) Companies whose equity share capital is listed exclusively on the SME and SME-ITP Platforms.

#### Corporate Governance

- I. The company agrees to comply with the provisions of Clause 49 which shall be implemented in a manner so as to achieve the objectives of the principles as mentioned below. In case of any ambiguity, the said provisions shall be interpreted and applied in alignment with the principles.

#### A. The Rights of Shareholders

1. The company should seek to protect and facilitate the exercise of shareholders' rights.
  - a. Shareholders should have the right to participate in, and to be sufficiently informed on, decisions concerning fundamental corporate changes.
  - b. Shareholders should have the opportunity to participate effectively and vote in general shareholder meetings.
  - c. Shareholders should be informed of the rules, including voting procedures that govern general shareholder meetings.
  - d. Shareholders should have the opportunity to ask questions to the board, to place items on the agenda of general meetings, and to propose resolutions, subject to reasonable limitations.
  - e. Effective shareholder participation in key Corporate Governance decisions, such as the nomination and election of board members, should be facilitated.
  - f. The exercise of ownership rights by all shareholders, including institutional investors, should be facilitated.
  - g. The Company should have an adequate mechanism to address the grievances of the shareholders.
  - h. Minority shareholders should be protected from abusive actions by, or in the interest of, controlling shareholders acting either directly or indirectly, and should have effective means of redress.
2. The company should provide adequate and timely information to shareholders.
  - a. Shareholders should be furnished with sufficient and timely information concerning the date, location and agenda of general meetings, as well as full and timely information regarding the issues to be discussed at the meeting.
  - b. Capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership should be disclosed.

- c. All investors should be able to obtain information about the rights attached to all series and classes of shares before they purchase.
- 3. The company should ensure equitable treatment of all shareholders, including minority and foreign shareholders.
  - a. All shareholders of the same series of a class should be treated equally.
  - b. Effective shareholder participation in key Corporate Governance decisions, such as the nomination and election of board members, should be facilitated.
  - c. Exercise of voting rights by foreign shareholders should be facilitated.
  - d. The company should devise a framework to avoid Insider trading and abusive self-dealing.
  - e. Processes and procedures for general shareholder meetings should allow for equitable treatment of all shareholders.
  - f. Company procedures should not make it unduly difficult or expensive to cast votes.

#### **B. Role of stakeholders in Corporate Governance**

- 1. The company should recognise the rights of stakeholders and encourage cooperation between company and the stakeholders.
  - a. The rights of stakeholders that are established by law or through mutual agreements are to be respected.
  - b. Stakeholders should have the opportunity to obtain effective redress for violation of their rights.
  - c. Company should encourage mechanisms for employee participation.
  - d. Stakeholders should have access to relevant, sufficient and reliable information on a timely and regular basis to enable them to participate in Corporate Governance process.
  - e. The company should devise an effective whistle blower mechanism enabling stakeholders, including individual employees and their representative bodies, to freely communicate their concerns about illegal or unethical practices.

#### **C. Disclosure and transparency**

- 1. The company should ensure timely and accurate disclosure on all material matters including the financial situation, performance, ownership, and governance of the company.
  - a. Information should be prepared and disclosed in accordance with the prescribed standards of accounting, financial and non-financial disclosure.
  - b. Channels for disseminating information should provide for equal, timely and cost efficient access to relevant information by users.
  - c. The company should maintain minutes of the meeting explicitly recording dissenting opinions, if any.
  - d. The company should implement the prescribed accounting standards in letter and spirit in the preparation of financial statements taking into consideration the interest of all stakeholders and should also ensure that the annual audit is conducted by an independent, competent and qualified auditor.

#### **D. Responsibilities of the Board**

- 1. Disclosure of Information
  - a. Members of the Board and key executives should be required to disclose to the board

whether they, directly, indirectly or on behalf of third parties, have a material interest in any transaction or matter directly affecting the company.

- b. The Board and top management should conduct themselves so as to meet the expectations of operational transparency to stakeholders while at the same time maintaining confidentiality of information in order to foster a culture for good decision-making.

## 2. Key functions of the Board

The board should fulfill certain key functions, including:

- a. Reviewing and guiding corporate strategy, major plans of action, risk policy, annual budgets and business plans; setting performance objectives; monitoring implementation and corporate performance; and overseeing major capital expenditures, acquisitions and divestments.
- b. Monitoring the effectiveness of the company's governance practices and making changes as needed.
- c. Selecting, compensating, monitoring and, when necessary, replacing key executives and overseeing succession planning.
- d. Aligning key executive and board remuneration with the longer term interests of the company and its shareholders.
- e. Ensuring a transparent board nomination process with the diversity of thought, experience, knowledge, perspective and gender in the Board.
- f. Monitoring and managing potential conflicts of interest of management, board members and shareholders, including misuse of corporate assets and abuse in related party transactions.
- g. Ensuring the integrity of the company's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards.
- h. Overseeing the process of disclosure and communications.
- i. Monitoring and reviewing Board Evaluation framework.

## 3. Other responsibilities

- a. The Board should provide the strategic guidance to the company, ensure effective monitoring of the management and should be accountable to the company and the shareholders.
- b. The Board should set a corporate culture and the values by which executives throughout a group will behave.
- c. Board members should act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company and the shareholders.
- d. The Board should encourage continuing directors training to ensure that the Board members are kept up to date.
- e. Where Board decisions may affect different shareholder groups differently, the Board should treat all shareholders fairly.
- f. The Board should apply high ethical standards. It should take into account the interests of stakeholders.



- g. The Board should be able to exercise objective independent judgement on corporate affairs.
- h. Boards should consider assigning a sufficient number of non-executive Board members capable of exercising independent judgement to tasks where there is a potential for conflict of interest.
- i. The Board should ensure that, while rightly encouraging positive thinking, these do not result in over-optimism that either leads to significant risks not being recognised or exposes the company to excessive risk.
- j. The Board should have ability to 'step back' to assist executive management by challenging the assumptions underlying: strategy, strategic initiatives (such as acquisitions), risk appetite, exposures and the key areas of the company's focus.
- k. When committees of the board are established, their mandate, composition and working procedures should be well defined and disclosed by the board.
- l. Board members should be able to commit themselves effectively to their responsibilities.
- m. In order to fulfil their responsibilities, board members should have access to accurate, relevant and timely information.
- n. The Board and senior management should facilitate the Independent Directors to perform their role effectively as a Board member and also a member of a committee.

## **II. Board of Directors**

### **A. Composition of Board**

1. The Board of Directors of the company shall have an optimum combination of executive and non-executive directors with at least one woman director and not less than fifty percent of the Board of Directors comprising non-executive directors.

The provisions regarding appointment of woman director shall be applicable with effect from April 01, 2015.

2. Where the Chairman of the Board is a non-executive director, at least one-third of the Board should comprise independent directors and in case the company does not have a regular non-executive Chairman, at least half of the Board should comprise independent directors.

Provided that where the regular non-executive Chairman is a promoter of the company or is related to any promoter or person occupying management positions at the Board level or at one level below the Board, at least one-half of the Board of the company shall consist of independent directors.

**Explanation.—** For the purpose of the expression "related to any promoter" referred to in sub-clause (2):

- (i) If the promoter is a listed entity, its directors other than the independent directors, its employees or its nominees shall be deemed to be related to it;
- (ii) If the promoter is an unlisted entity, its directors, its employees or its nominees shall be deemed to be related to it.

### **B. Independent Directors**

1. For the purpose of the clause A, the expression 'independent director' shall mean a non-executive director, other than a nominee director of the company:
  - a. who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;

- b. (i) who is or was not a promoter of the company or its holding, subsidiary or associate company;
- (ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;
- c. apart from receiving director's remuneration, has or had no material pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;
- d. none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;
- e. who, neither himself nor any of his relatives —
  - (i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;
  - (ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of —
    - (A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or
    - (B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent or more of the gross turnover of such firm;
  - (iii) holds together with his relatives two per cent or more of the total voting power of the company; or
  - (iv) is a Chief Executive or director, by whatever name called, of any non-profit organisation that receives twenty-five per cent or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent or more of the total voting power of the company;
  - (v) is a material supplier, service provider or customer or a lessor or lessee of the company;
- f. who is not less than 21 years of age.

**Explanation.—**

For the purposes of the sub-clause (1):

- (i) "Associate" shall mean a company which is an "associate" as defined in Accounting Standard (AS) 23, "Accounting for Investments in Associates in Consolidated Financial Statements", issued by the Institute of Chartered Accountants of India.
- (ii) "Key Managerial Personnel" shall mean "Key Managerial Personnel" as defined in section 2(51) of the Companies Act, 2013.
- (iii) "Relative" shall mean "relative" as defined in section 2(77) of the Companies Act, 2013 and rules prescribed there under.

## **2. Limit on number of directorships**

- a. A person shall not serve as an independent director in more than seven listed companies.
- b. Further, any person who is serving as a whole time director in any listed company shall serve as an independent director in not more than three listed companies.

## **3. Maximum tenure of Independent Directors**

- a. The maximum tenure of Independent Directors shall be in accordance with the Companies Act, 2013 and clarifications/circulars issued by the Ministry of Corporate Affairs, in this regard, from time to time.

## **4. Formal letter of appointment to Independent Directors**

- a. The company shall issue a formal letter of appointment to independent directors in the manner as provided in the Companies Act, 2013.
- b. The terms and conditions of appointment shall be disclosed on the website of the company.

## **5. Performance evaluation of Independent Directors**

- a. The Nomination Committee shall lay down the evaluation criteria for performance evaluation of independent directors.
- b. The company shall disclose the criteria for performance evaluation, as laid down by the Nomination Committee, in its Annual Report.
- c. The performance evaluation of independent directors shall be done by the entire Board of Directors (excluding the director being evaluated).
- d. On the basis of the report of performance evaluation, it shall be determined whether to extend or continue the term of appointment of the independent director.

## **6. Separate meetings of the Independent Directors**

- a. The independent directors of the company shall hold at least one meeting in a year, without the attendance of non-independent directors and members of management. All the independent directors of the company shall strive to be present at such meeting.
- b. The independent directors in the meeting shall, *inter-alia*:
  - (i) review the performance of non-independent directors and the Board as a whole;
  - (ii) review the performance of the Chairperson of the company, taking into account the views of executive directors and non-executive directors;
  - (iii) assess the quality, quantity and timeliness of flow of information between the company management and the Board that is necessary for the Board to effectively and reasonably perform their duties.

## **7. Familiarisation programme for Independent Directors**

- a. The company shall familiarise the independent directors with the company, their roles, rights, responsibilities in the company, nature of the industry in which the company operates, business model of the company, etc., through various programmes.
- b. The details of such familiarisation programmes shall be disclosed on the company's website and a web link thereto shall also be given in the Annual Report.

## **C. Non-executive Directors' compensation and disclosures**

All fees / compensation, if any paid to non-executive directors, including independent directors, shall be fixed by the Board of Directors and shall require previous approval of shareholders in general

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

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

Provided further that independent directors shall not be entitled to any stock option.

#### **D. Other provisions as to Board and Committees**

1. 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. The minimum information to be made available to the Board is given in **Annexure - X to the Listing Agreement**.
2. A director shall not be a member in more than ten committees or act as Chairman of more than five committees across all companies in which he is a director. Furthermore, every director shall inform the company about the committee positions he occupies in other companies and notify changes as and when they take place.

##### **Explanation.—**

- (i) For the purpose of considering the limit of the committees on which a director can serve, all public limited companies, whether listed or not, shall be included and all other companies including private limited companies, foreign companies and companies under Section 8 of the Companies Act, 2013 shall be excluded.
- (ii) For the purpose of reckoning the limit under this sub-clause, Chairmanship/ membership of the Audit Committee and the Stakeholders' Relationship Committee alone shall be considered.
3. The Board shall periodically review compliance reports of all laws applicable to the company, prepared by the company as well as steps taken by the company to rectify instances of non-compliances.
4. An independent director who resigns or is removed from the Board of the Company shall be replaced by a new independent director at the earliest but not later than the immediate next Board meeting or three months from the date of such vacancy, whichever is later.
5. Provided that where the company fulfils the requirement of independent directors in its Board even without filling the vacancy created by such resignation or removal, as the case may be, the requirement of replacement by a new independent director shall not apply.
6. The Board of the company shall satisfy itself that plans are in place for orderly succession for appointments to the Board and to senior management.

#### **E. Code of Conduct**

1. The Board shall lay down a code of conduct for all Board members and senior management of the company. The code of conduct shall be posted on the website of the company.
2. All Board members and senior management personnel shall affirm compliance with the code on an annual basis. The Annual Report of the company shall contain a declaration to this effect signed by the CEO.
3. The Code of Conduct shall suitably incorporate the duties of Independent Directors as laid down in the Companies Act, 2013.
4. An independent director shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently with respect of the provisions contained in the Listing Agreement.

**Explanation.—** For this purpose, the term “senior management” shall mean personnel of the company who are members of its core management team excluding Board of Directors. Normally, this would comprise all members of management one level below the executive directors, including all functional heads.

#### **F. Whistle Blower Policy**

1. The company shall establish a vigil mechanism for directors and employees to report concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethics policy.
2. This mechanism should also provide for adequate safeguards against victimization of director(s) / employee(s) who avail of the mechanism and also provide for direct access to the Chairman of the Audit Committee in exceptional cases.
3. The details of establishment of such mechanism shall be disclosed by the company on its website and in the Board's report.

### **III. Audit Committee**

#### **A. Qualified and Independent Audit Committee**

A qualified and independent audit committee shall be set up, giving the terms of reference subject to the following:

1. The audit committee shall have minimum three directors as members. Two-thirds of the members of audit committee shall be independent directors.
2. All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.

**Explanation (i):** The term “financially literate” means the ability to read and understand basic financial statements i.e. balance sheet, profit and loss account, and statement of cash flows.

**Explanation (ii):** A member will be considered to have accounting or related financial management expertise if he or she possesses experience in finance or accounting, or requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

3. The Chairman of the Audit Committee shall be an independent director;
4. The Chairman of the Audit Committee shall be present at Annual General Meeting to answer shareholder queries;
5. The Audit Committee may invite such of the executives, as it considers appropriate (and particularly the head of the finance function) to be present at the meetings of the committee, but on occasions it may also meet without the presence of any executives of the company. The finance director, head of internal audit and a representative of the statutory auditor may be present as invitees for the meetings of the audit committee;
6. The Company Secretary shall act as the secretary to the committee.

#### **B. Meeting of Audit Committee**

The Audit Committee should meet at least four times in a year and not more than four months shall elapse between two meetings. The quorum shall be either two members or one third of the members of the audit committee whichever is greater, but there should be a minimum of two independent members present.

### **C. Powers of Audit Committee**

The Audit Committee shall have powers, which should include the following:

1. To investigate any activity within its terms of reference.
2. To seek information from any employee.
3. To obtain outside legal or other professional advice.
4. To secure attendance of outsiders with relevant expertise, if it considers necessary.

### **D. Role of Audit Committee**

The role of the Audit Committee shall include the following:

1. Oversight of the company's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible;
2. Recommendation for appointment, remuneration and terms of appointment of auditors of the company;
3. Approval of payment to statutory auditors for any other services rendered by the statutory auditors;
4. Reviewing, with the management, the annual financial statements and auditor's report thereon before submission to the board for approval, with particular reference to:
  - a. Matters required to be included in the Director's Responsibility Statement to be included in the Board's report in terms of clause (c) of sub-section 3 of section 134 of the Companies Act, 2013
  - b. Changes, if any, in accounting policies and practices and reasons for the same
  - c. Major accounting entries involving estimates based on the exercise of judgment by management
  - d. Significant adjustments made in the financial statements arising out of audit findings
  - e. Compliance with listing and other legal requirements relating to financial statements
  - f. Disclosure of any related party transactions
  - g. Qualifications in the draft audit report
5. Reviewing, with the management, the quarterly financial statements before submission to the board for approval;
6. Reviewing, with the management, the statement of uses / application of funds raised through an issue (public issue, rights issue, preferential issue, etc.), the statement of funds utilized for purposes other than those stated in the offer document / prospectus / notice and the report submitted by the monitoring agency monitoring the utilisation of proceeds of a public or rights issue, and making appropriate recommendations to the Board to take up steps in this matter;
7. Review and monitor the auditor's independence and performance, and effectiveness of audit process;
8. Approval or any subsequent modification of transactions of the company with related parties;
9. Scrutiny of inter-corporate loans and investments;
10. Valuation of undertakings or assets of the company, wherever it is necessary;
11. Evaluation of internal financial controls and risk management systems;
12. Reviewing, with the management, performance of statutory and internal auditors, adequacy of the internal control systems;



13. Reviewing the adequacy of internal audit function, if any, including the structure of the internal audit department, staffing and seniority of the official heading the department, reporting structure coverage and frequency of internal audit;
14. Discussion with internal auditors of any significant findings and follow up there on;
15. Reviewing the findings of any internal investigations by the internal auditors into matters where there is suspected fraud or irregularity or a failure of internal control systems of a material nature and reporting the matter to the board;
16. Discussion with statutory auditors before the audit commences, about the nature and scope of audit as well as post-audit discussion to ascertain any area of concern;
17. To look into the reasons for substantial defaults in the payment to the depositors, debenture holders, shareholders (in case of non-payment of declared dividends) and creditors;
18. To review the functioning of the Whistle Blower mechanism;
19. Approval of appointment of CFO (i.e., the whole-time Finance Director or any other person heading the finance function or discharging that function) after assessing the qualifications, experience and background, etc. of the candidate;
20. Carrying out any other function as is mentioned in the terms of reference of the Audit Committee.

**Explanation (i):** The term "related party transactions" shall have the same meaning as provided in Clause 49(VII) of the Listing Agreement.

#### **E. Review of information by Audit Committee**

The Audit Committee shall mandatorily review the following information:

1. Management discussion and analysis of financial condition and results of operations;
2. Statement of significant related party transactions (as defined by the Audit Committee), submitted by management;
3. Management letters / letters of internal control weaknesses issued by the statutory auditors;
4. Internal audit reports relating to internal control weaknesses; and
5. The appointment, removal and terms of remuneration of the Chief internal auditor shall be subject to review by the Audit Committee.

#### **IV. Nomination and Remuneration Committee**

- A. The company through its Board of Directors shall constitute the nomination and remuneration committee which shall comprise at least three directors, all of whom shall be non-executive directors and at least half shall be independent. Chairman of the committee shall be an independent director.

Provided that the chairperson of the company (whether executive or nonexecutive) may be appointed as a member of the Nomination and Remuneration Committee but shall not chair such Committee.

- B. The role of the committee shall, *inter-alia*, include the following:

1. Formulation of the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a policy, relating to the remuneration of the directors, key managerial personnel and other employees;
2. Formulation of criteria for evaluation of Independent Directors and the Board;
3. Devising a policy on Board diversity;

4. Identifying persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, and recommend to the Board their appointment and removal. The company shall disclose the remuneration policy and the evaluation criteria in its Annual Report.
- C. The Chairman of the nomination and remuneration committee could be present at the Annual General Meeting, to answer the shareholders' queries. However, it would be up to the Chairman to decide who should answer the queries.

## V. Subsidiary Companies

- A. At least one independent director on the Board of Directors of the holding company shall be a director on the Board of Directors of a material non-listed Indian subsidiary company.
- B. The Audit Committee of the listed holding company shall also review the financial statements, in particular, the investments made by the unlisted subsidiary company.
- C. The minutes of the Board meetings of the unlisted subsidiary company shall be placed at the Board meeting of the listed holding company. The management should periodically bring to the attention of the Board of Directors of the listed holding company, a statement of all significant transactions and arrangements entered into by the unlisted subsidiary company.
- D. The company shall formulate a policy for determining 'material' subsidiaries and such policy shall be disclosed on the company's website and a web link thereto shall be provided in the Annual Report.
- E. For the purpose of this clause, a subsidiary shall be considered as material if the investment of the company in the subsidiary exceeds twenty per cent of its consolidated net worth as per the audited balance sheet of the previous financial year or if the subsidiary has generated twenty per cent of the consolidated income of the company during the previous financial year.
- F. No company shall dispose of shares in its material subsidiary which would reduce its shareholding (either on its own or together with other subsidiaries) to less than 50% or cease the exercise of control over the subsidiary without passing a special resolution in its General Meeting except in cases where such divestment is made under a scheme of arrangement duly approved by a Court/Tribunal.
- G. Selling, disposing and leasing of assets amounting to more than twenty percent of the assets of the material subsidiary on an aggregate basis during a financial year shall require prior approval of shareholders by way of special resolution, unless the sale/disposal/lease is made under a scheme of arrangement duly approved by a Court/Tribunal."

**Explanation (i):** For the purpose of sub-clause (V)(A), the term "material non-listed Indian subsidiary" shall mean an unlisted subsidiary, incorporated in India, whose income or net worth (i.e. paid up capital and free reserves) exceeds 20% of the consolidated income or net worth respectively, of the listed holding company and its subsidiaries in the immediately preceding accounting year.

**Explanation (ii):** For the purpose of sub-clause (V)(C), the term "significant transaction or arrangement" shall mean any individual transaction or arrangement that exceeds or is likely to exceed 10% of the total revenues or total expenses or total assets or total liabilities, as the case may be, of the material unlisted subsidiary for the immediately preceding accounting year.

**Explanation (iii):** For the purpose of sub-clause (V), where a listed holding company has a listed subsidiary which is itself a holding company, the above provisions shall apply to the listed subsidiary insofar as its subsidiaries are concerned.

## **VI. Risk Management**

- A The company shall lay down procedures to inform Board members about the risk assessment and minimization procedures.
- B The Board shall be responsible for framing, implementing and monitoring the risk management plan for the company.
- C The company through its Board of Directors shall constitute a Risk Management Committee. The Board shall define the roles and responsibilities of the Risk Management Committee and may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit.
- D The majority of Committee shall consist of members of the Board of Directors.
- E Senior executives of the company may be members of the said Committee but the Chairman of the Committee shall be a member of the Board of Directors.

## **VII. Related Party Transactions**

- A. A related party transaction is a transfer of resources, services or obligations between a company and a related party, regardless of whether a price is charged.

Explanation.- A "transaction" with a related party shall be construed to include single transaction or a group of transactions in a contract.

- B. For the purpose of Clause 49 (VII), an entity shall be considered as related to the company if:
  - (i) such entity is a related party under Section 2(76) of the Companies Act, 2013; or
  - (ii) such entity is a related party under the applicable accounting standards.
- C. The company shall formulate a policy on materiality of Related Party Transactions and also on dealing with Related Party Transactions.

Provided that a transaction with a related party shall be considered material if the transaction / transactions to be entered into individually or taken together with previous transactions during a financial year, exceeds ten percent of the annual consolidated turnover of the company as per the last audited financial statements of the company.

- D. All Related Party Transactions shall require prior approval of the Audit Committee. However, the Audit Committee may grant omnibus approval for Related Party Transactions proposed to be entered into by the company 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 company and such approval shall be applicable in respect of transactions which are repetitive in nature.
  - b. The Audit Committee shall satisfy itself the need for such omnibus approval and that such approval is in the interest of the company;
  - c. Such omnibus approval shall specify (i) the name/s of the related party, nature of transaction, period of transaction, maximum amount of transaction that can 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-Provided that where the need for Related Party Transaction cannot be foreseen and aforesaid details are not available, Audit Committee may grant omnibus approval for such transactions subject to their value not exceeding ₹ 1 crore per transaction.
  - d. Audit Committee shall review, at least on a quarterly basis, the details of RPTs entered into by the company pursuant to each of the omnibus approval 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
- E. All material Related Party Transactions shall require approval of the shareholders through special resolution and the related parties shall abstain from voting on such resolutions.  
Provided that sub-clause 49 (VII) (D) and (E) shall not be applicable in the following cases:
  - (i) transactions entered into between two government companies;
  - (ii) 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.

**Explanation(i):** For the purpose of Clause 49(VII), "Government company" shall have the same meaning as defined in Section 2(45) of the Companies Act, 2013.

**Explanation(ii):** For the purpose of Clause 49(VII), all entities falling under the definition of related parties shall abstain from voting irrespective of whether the entity is a party to the particular transaction or not.

## **VIII. Disclosures**

### **A. Related Party Transactions**

1. Details of all material transactions with related parties shall be disclosed quarterly along with the compliance report on corporate governance.
2. The company shall disclose the policy on dealing with Related Party Transactions on its website and a web link thereto shall be provided in the Annual Report.

### **B. Disclosure of Accounting Treatment**

Where in the preparation of financial statements, a treatment different from that prescribed in an Accounting Standard has been followed, the fact shall be disclosed in the financial statements, together with the management's explanation as to why it believes such alternative treatment is more representative of the true and fair view of the underlying business transaction in the Corporate Governance Report.

### **C. Remuneration of Directors**

1. All pecuniary relationship or transactions of the non-executive directors vis-à-vis the company shall be disclosed in the Annual Report.
2. In addition to the disclosures required under the Companies Act, 2013, the following disclosures on the remuneration of directors shall be made in the section on the corporate governance of the Annual Report:
  - a. All elements of remuneration package of individual directors summarized under major groups, such as salary, benefits, bonuses, stock options, pension etc.
  - b. Details of fixed component and performance linked incentives, along with the performance criteria.
  - c. Service contracts, notice period, severance fees.
  - d. Stock option details, if any - and whether issued at a discount as well as the period over which accrued and over which exercisable.
3. The company shall publish its criteria of making payments to non-executive directors in its annual report. Alternatively, this may be put up on the company's website and reference drawn thereto in the annual report.



4. The company shall disclose the number of shares and convertible instruments held by non-executive directors in the annual report.
5. Non-executive directors shall be required to disclose their shareholding (both own or held by / for other persons on a beneficial basis) in the listed company in which they are proposed to be appointed as directors, prior to their appointment. These details should be disclosed in the notice to the general meeting called for appointment of such director.

#### **D. Management**

1. As part of the directors' report or as an addition thereto, a Management Discussion and Analysis report should form part of the Annual Report to the shareholders. This Management Discussion & Analysis should include discussion on the following matters within the limits set by the company's competitive position:
  - a. Industry structure and developments.
  - b. Opportunities and Threats.
  - c. Segment-wise or product-wise performance.
  - d. Outlook
  - e. Risks and concerns.
  - f. Internal control systems and their adequacy.
  - g. Discussion on financial performance with respect to operational performance.
  - h. Material developments in Human Resources / Industrial Relations front, including number of people employed.
2. Senior management shall make disclosures to the board relating to all material financial and commercial transactions, where they have personal interest, that may have a potential conflict with the interest of the company at large (for e.g. dealing in company shares, commercial dealings with bodies, which have shareholding of management and their relatives etc.)

**Explanation:** For this purpose, the term "senior management" shall mean personnel of the company who are members of its core management team excluding the Board of Directors). This would also include all members of management one level below the executive directors including all functional heads.

3. The Code of Conduct for the Board of Directors and the senior management shall be disclosed on the website of the company.

#### **E. Shareholders**

1. In case of the appointment of a new director or re-appointment of a director the shareholders must be provided with the following information:
  - a. A brief resume of the director;
  - b. Nature of his expertise in specific functional areas;
  - c. Names of companies in which the person also holds the directorship and the membership of Committees of the Board; and
  - d. Shareholding of non-executive directors as stated in Clause 49 (IV) (E) (v) above
2. Disclosure of relationships between directors inter-se shall be made in the Annual Report, notice of appointment of a director, prospectus and letter of offer for issuances and any related filings made to the stock exchanges where the company is listed.

3. Quarterly results and presentations made by the company to analysts shall be put on company's web-site, or shall be sent in such a form so as to enable the stock exchange on which the company is listed to put it on its own web-site.
4. A committee under the Chairmanship of a non-executive director and such other members as may be decided by the Board of the company shall be formed to specifically look into the redressal of grievances of shareholders, debenture holders and other security holders. This Committee shall be designated as 'Stakeholders Relationship Committee' and shall consider and resolve the grievances of the security holders of the company including complaints related to transfer of shares, non-receipt of balance sheet, non-receipt of declared dividends.
5. To expedite the process of share transfers, the Board of the company shall delegate the power of share transfer to an officer or a committee or to the registrar and share transfer agents. The delegated authority shall attend to share transfer formalities at least once in a fortnight.

**I. Proceeds from public issues, rights issue, preferential issues, etc.**

When money is raised through an issue (public issues, rights issues, preferential issues etc.), the company shall disclose the uses /applications of funds by major category (capital expenditure, sales and marketing, working capital, etc), on a quarterly basis as a part of their quarterly declaration of financial results to the Audit Committee. Further, on an annual basis, the company shall prepare a statement of funds utilized for purposes other than those stated in the offer document/ prospectus/ notice and place it before the audit committee. Such disclosure shall be made only till such time that the full money raised through the issue has been fully spent. This statement shall be certified by the statutory auditors of the company. Furthermore, where the company has appointed a monitoring agency to monitor the utilisation of proceeds of a public or rights issue, it shall place before the Audit Committee the monitoring report of such agency, upon receipt, without any delay. The audit committee shall make appropriate recommendations to the Board to take up steps in this matter.

**IX. CEO/CFO certification**

The CEO or the Managing Director or manager or in their absence, a Whole Time Director appointed in terms of Companies Act, 2013 and the CFO shall certify to the Board that:

- A. They have reviewed financial statements and the cash flow statement for the year and that to the best of their knowledge and belief :
  1. these statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading;
  2. these statements together present a true and fair view of the company's affairs and are in compliance with existing accounting standards, applicable laws and regulations.
- B. There are, to the best of their knowledge and belief, no transactions entered into by the company during the year which are fraudulent, illegal or violative of the company's code of conduct.
- C. They accept responsibility for establishing and maintaining internal controls for financial reporting and that they have evaluated the effectiveness of internal control systems of the company pertaining to financial reporting and they have disclosed to the auditors and the Audit Committee, deficiencies in the design or operation of such internal controls, if any, of which they are aware and the steps they have taken or propose to take to rectify these deficiencies.
- D. They have indicated to the auditors and the Audit committee:
  1. significant changes in internal control over financial reporting during the year;





2. significant changes in accounting policies during the year and that the same have been disclosed in the notes to the financial statements; and
3. instances of significant fraud of which they have become aware and the involvement therein, if any, of the management or an employee having a significant role in the company's internal control system over financial reporting.

**X. Report on Corporate Governance**

- A. There shall be a separate section on Corporate Governance in the Annual Reports of company, with a detailed compliance report on Corporate Governance. Non-compliance of any mandatory requirement of this clause with reasons thereof and the extent to which the non-mandatory requirements have been adopted should be specifically highlighted. The suggested list of items to be included in this report is given in **Annexure - XII to the Listing Agreement** and list of non-mandatory requirements is given in **Annexure - XIII to the Listing Agreement**.
- B. The companies shall submit a quarterly compliance report to the stock exchanges within 15 days from the close of quarter as per the format given in **Annexure – XI to the Listing Agreement**. The report shall be signed either by the Compliance Officer or the Chief Executive Officer of the company.

**XI. Compliance**

- A. The company shall obtain a certificate from either the auditors or practicing company secretaries regarding compliance of conditions of corporate governance as stipulated in this clause and annex the certificate with the directors' report, which is sent annually to all the shareholders of the company. The same certificate shall also be sent to the Stock Exchanges along with the annual report filed by the company.
- B. The non-mandatory requirements given in **Annexure - XIII to the Listing Agreement** may be implemented as per the discretion of the company. However, the disclosures of the compliance with mandatory requirements and adoption (and compliance) / non-adoption of the non-mandatory requirements shall be made in the section on corporate governance of the Annual Report.

**Annexure - X to the Listing Agreement**

**Information to be placed before Board of Directors**

1. Annual operating plans and budgets and any updates.
2. Capital budgets and any updates.
3. Quarterly results for the company and its operating divisions or business segments.
4. Minutes of meetings of audit committee and other committees of the board.
5. The information on recruitment and remuneration of senior officers just below the board level, including appointment or removal of Chief Financial Officer and the Company Secretary.
6. Show cause, demand, prosecution notices and penalty notices which are materially important.
7. Fatal or serious accidents, dangerous occurrences, any material effluent or pollution problems.
8. Any material default in financial obligations to and by the company, or substantial nonpayment for goods sold by the company.
9. Any issue, which involves possible public or product liability claims of substantial nature, including any judgement or order which, may have passed strictures on the conduct of the company or taken an adverse view regarding another enterprise that can have negative implications on the company.
10. Details of any joint venture or collaboration agreement.
11. Transactions that involve substantial payment towards goodwill, brand equity, or intellectual property.
12. Significant labour problems and their proposed solutions. Any significant development in Human Resources/ Industrial Relations front like signing of wage agreement, implementation of Voluntary Retirement Scheme etc.
13. Sale of material nature, of investments, subsidiaries, assets, which is not in normal course of business.
14. Quarterly details of foreign exchange exposures and the steps taken by management to limit the risks of adverse exchange rate movement, if material.
15. Non-compliance of any regulatory, statutory or listing requirements and shareholders service such as non-payment of dividend, delay in share transfer etc.



## **Annexure - XI to the Listing Agreement**

### **Format of Quarterly Compliance Report on Corporate Governance**

**Name of the Company: Quarter ending on:**

<b>Particulars</b>	<b>Clause of Listing agreement</b>	<b>Compliance Status Yes/No</b>	<b>Remarks</b>
<b>II. Board of Directors</b>	49 (II)		
(A) Composition of Board	49 (IIA)		
(B) Independent Directors	49 (IIB)		
(C) Non-executive Directors' compensation & disclosures	49 (IIC)		
(D) Other provisions as to Board and Committees	49 (IID)		
(E) Code of Conduct	49 (IIE)		
(F) Whistle Blower Policy	49 (IIF)		
<b>III. Audit Committee</b>	49 (III)		
(A) Qualified & Independent Audit Committee	49 (IIIA)		
(B) Meeting of Audit Committee	49 (IIIB)		
(C) Powers of Audit Committee	49 (IIIC)		
(D) Role of Audit Committee	49 (IIID)		
(E) Review of Information by Audit Committee	49 (IIIE)		
<b>IV. Nomination and Remuneration Committee</b>	49 (IV)		
<b>V. Subsidiary Companies</b>	49 (V)		
<b>VI. Risk Management</b>	49 (VI)		
<b>VII. Related Party Transactions</b>	49 (VII)		
<b>VIII. Disclosures</b>	49 (VIII)		
(A) Related party transactions	49 (VIII A)		
(B) Disclosure of Accounting Treatment	49 (VIII B)		
(C) Remuneration of Directors	49 (VIII C)		
(D) Management	49 (VIII D)		
(E) Shareholders	49 (VIII E)		
(F) Disclosure of resignation of directors	49 (VIII F)		
(G) Disclosure of formal letter of appointment	49 (VIII G)		
(H) Disclosures in the Annual report	49 (VIII H)		
(I) Proceeds from public issues, rights issue, preferential issues, etc	49 (VIII I)		
<b>IX. CEO/CFO Certification</b>	49 (IX)		
<b>X. Report on Corporate Governance</b>	49 (X)		
<b>XI. Compliance</b>	49 (XI)		

**Note:**

1. The details under each head shall be provided to incorporate all the information required as per the provisions of the Clause 49 of the Listing Agreement.
2. In the column No. 3, compliance or non-compliance may be indicated by Yes/No/N.A.. For example, if the Board has been composed in accordance with the Clause 49 I of the Listing Agreement, "Yes" may be indicated. Similarly, in case the company has no related party transactions, the words "N.A." may be indicated against 49(VII).
3. In the remarks column, reasons for non-compliance may be indicated, for example, in case of requirement related to circulation of information to the shareholders, which would be done only in the AGM/EGM, it might be indicated in the "Remarks" column as – "will be complied with at the AGM". Similarly, in respect of matters which can be complied with only where the situation arises, for example, "Report on Corporate Governance" is to be a part of Annual Report only, the words "will be complied in the next Annual Report" may be indicated.

**Annexure - XII to the Listing Agreement**

**Suggested List of Items to Be Included In the Report on Corporate Governance in the Annual Report of Companies**

1. A brief statement on company's philosophy on code of governance.
2. Board of Directors:
  - a. Composition and category of directors, for example, promoter, executive, nonexecutive, independent non-executive, nominee director, which institution represented as lender or as equity investor.
  - b. Attendance of each director at the Board meetings and the last AGM.
  - c. Number of other Boards or Board Committees in which he/she is a member or Chairperson.
  - d. Number of Board meetings held, dates on which held.
3. Audit Committee:
  - i. Brief description of terms of reference
  - ii. Composition, name of members and Chairperson
  - iii. Meetings and attendance during the year
4. Nomination and Remuneration Committee:
  - i. Brief description of terms of reference
  - ii. Composition, name of members and Chairperson
  - iii. Attendance during the year
  - iv. Remuneration policy
  - v. Details of remuneration to all the directors, as per format in main report.
5. Stakeholders' Grievance Committee:
  - i. Name of non-executive director heading the committee
  - ii. Name and designation of compliance officer
  - iii. Number of shareholders' complaints received so far
  - iv. Number not solved to the satisfaction of shareholders
  - v. Number of pending complaints
6. General Body meetings:
  - i. Location and time, where last three AGMs held.
  - ii. Whether any special resolutions passed in the previous 3 AGMs
  - iii. Whether any special resolution passed last year through postal ballot - details of voting pattern
  - iv. Person who conducted the postal ballot exercise
  - v. Whether any special resolution is proposed to be conducted through postal ballot vi. Procedure for postal ballot
7. Disclosures:
  - i. Disclosures on materially significant related party transactions that may have potential conflict with the interests of company at large.



- ii. Details of non-compliance by the company, penalties, strictures imposed on the company by Stock Exchange or SEBI or any statutory authority, on any matter related to capital markets, during the last three years.
  - iii. Whistle Blower policy and affirmation that no personnel has been denied access to the audit committee.
  - iv. Details of compliance with mandatory requirements and adoption of the non-mandatory requirements of this clause
8. Means of communication:
- i. Quarterly results
  - ii. Newspapers wherein results normally published
  - iii. Any website, where displayed
  - iv. Whether it also displays official news releases; and
  - v. The presentations made to institutional investors or to the analysts.
9. General Shareholder information:
- i. AGM: Date, time and venue
  - ii. Financial year
  - iii. Date of Book closure
  - iv. Dividend Payment Date
  - v. Listing on Stock Exchanges
  - vi. Stock Code
  - vii. Market Price Data: High., Low during each month in last financial year
  - viii. Performance in comparison to broad-based indices such as BSE Sensex, CRISIL index etc.
  - ix. Registrar and Transfer Agents
  - x. Share Transfer System
  - xi. Distribution of shareholding
  - xii. Dematerialization of shares and liquidity
  - xiii. Outstanding GDRs/ADRs/Warrants or any Convertible instruments, conversion date and likely impact on equity
  - xiv. Plant Locations
  - xv. Address for correspondence

**Annexure - XIII to the Listing Agreement**

**Non-Mandatory Requirements**

**1. The Board**

The Board - A non-executive Chairman may be entitled to maintain a Chairman's office at the company's expense and also allowed reimbursement of expenses incurred in performance of his duties.

**2. Shareholder Rights**

A half-yearly declaration of financial performance including summary of the significant events in last six-months, may be sent to each household of shareholders.

**3. Audit qualifications**

Company may move towards a regime of unqualified financial statements.

**4. Separate posts of Chairman and CEO**

The company may appoint separate persons to the post of Chairman and Managing Director/CEO.

**5. Reporting of Internal Auditor**

The Internal auditor may report directly to the Audit Committee.



### 3.5 SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011

**F. No. LAD-NRO/GN/201 1-12/24/30181.**—In exercise of the powers conferred under section 30 read with clause (h) of sub-section (2) of section 11 of the Securities and Exchange Board of India Act, 1992 the Securities and Exchange Board of India hereby, makes the following regulations, namely: —

#### PRELIMINARY

##### Short title, commencement and applicability [Regulation 1]

- (1) These regulations may be called the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.
- (2) These regulations shall come into force on the thirtieth day from the date of their publication in the Official Gazette.
- (3) These regulations shall apply to direct and indirect acquisition of shares or voting rights in, or control over target company.

Provided that 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 institutional trading platform of a recognised stock exchange.

##### Definitions [Regulation 2]

- (1) In these regulations, unless the context otherwise requires, the terms defined herein shall bear the meanings assigned to them below, and their cognate expressions and variations shall be construed accordingly,—
  - (a) “acquirer” means any person who, directly or indirectly, acquires or agrees to acquire whether by himself, or through, or with persons acting in concert with him, shares or voting rights in, or control over a target company;
  - (b) “acquisition” means, directly or indirectly, acquiring or agreeing to acquire shares or voting rights in, or control over, a target company;
  - (c) “Act” means the Securities and Exchange Board of India Act, 1992;
  - (d) “Board” means the Securities and Exchange Board of India established under section 3 of the Act;
  - (e) “control” includes the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner:  
**Provided** that a director or officer of a target company shall not be considered to be in control over such target company, merely by virtue of holding such position;
  - (f) “convertible security” means a security which is convertible into or exchangeable with equity shares of the issuer at a later date, with or without the option of the holder of the security, and includes convertible debt instruments and convertible preference shares;
  - (g) “disinvestment” means the direct or indirect sale by the Central Government or any State Government or by a government company, as the case may be, of shares or voting rights in, or control over, a target company, which is a public sector undertaking;
  - (h) “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;
  - (i) “financial year” means the period of twelve months commencing on the first day of the month of April;

- (j) "frequently traded shares" means shares of a target company, in which the traded turnover on any stock exchange during the twelve calendar months preceding the calendar month in which the public announcement is made, is at least ten per cent of the total number of shares of such class of the target company:  
**Provided** that where the share capital of a particular class of shares of the target company is not identical throughout such period, the weighted average number of total shares of such class of the target company shall represent the total number of shares;
- (k) "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;
- (l) "immediate relative" means any spouse of a person, and includes parent, brother, sister or child of such person or of the spouse;
- (m) "listing agreement" means the agreement with the stock exchange governing the conditions of listing of shares of the target company;
- (n) "manager to the open offer" means a merchant banker referred to in regulation 12;
- (o) "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;
- (p) "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;
- (q) "persons acting in concert" means,—
  - (1) persons who, with a common objective or purpose of acquisition of shares or voting rights in, or exercising control over a target company, pursuant to an agreement or understanding, formal or informal, directly or indirectly co-operate for acquisition of shares or voting rights in, or exercise of control over the target company.
  - (2) Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be persons acting in concert with other persons within the same category, unless the contrary is established,—
    - (i) a company, its holding company, subsidiary company and any company under the same management or control;
    - (ii) a company, its directors, and any person entrusted with the management of the company;
    - (iii) directors of companies referred to in item (i) and (ii) of this sub-clause and associates of such directors;
    - (iv) promoters and members of the promoter group;
    - (v) immediate relatives;
    - (vi) a mutual fund, its sponsor, trustees, trustee company, and asset management company;
    - (vii) a collective investment scheme and its collective investment management company, trustees and trustee company;
    - (viii) a venture capital fund and its sponsor, trustees, trustee company and asset management company;

- (viiiia) An alternative investment fund and its sponsor, trustees, trustee company and manager;
- (ix) a foreign institutional investor and its sub-accounts;
- (x) a merchant banker and its client, who is an acquirer;
- (xi) a portfolio manager and its client, who is an acquirer;
- (xii) banks, financial advisors and stock brokers of the acquirer, or of any company which is a holding company or subsidiary of the acquirer, and where the acquirer is an individual, of the immediate relative of such individual:

**Provided** that this sub-clause shall not apply to a bank whose sole role is that of providing normal commercial banking services or activities in relation to an open offer under these regulations;

- (xiii) an investment company or fund and any person who has an interest in such investment company or fund as a shareholder or unit holder having not less than 10 per cent of the paid-up capital of the investment company or unit capital of the fund, and any other investment company or fund in which such person or his associate holds not less than 10 per cent of the paid-up capital of that investment company or unit capital of that fund:

**Provided** that nothing contained in this sub-clause shall apply to holding of units of mutual funds registered with the Board;

**Explanation.—** For the purposes of this clause “associate” of a person means,—

- (a) any immediate relative of such person;
  - (b) trusts of which such person or his immediate relative is a trustee;
  - (c) partnership firm in which such person or his immediate relative is a partner; and
  - (d) members of Hindu undivided families of which such person is a coparcener;
- (r) “postal ballot” means a postal ballot as provided for under the Companies (Passing of the Resolution by Postal Ballot) Rules, 2001 made under the Companies Act, 1956;
  - (s) “Promoter” has the same meaning as in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 and includes a member of the promoter group;
  - (t) “Promoter group” has the same meaning as in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;
  - (u) “public sector undertaking” means a target company in which, directly or indirectly, majority of shares or voting rights or control is held by the Central Government or any State Government or Governments, or partly by the Central Government and partly by one or more State Governments;
  - (v) “shares” means shares in the equity share capital of a target company carrying voting rights, and includes any security which entitles the holder thereof to exercise voting rights;
- Explanation.—**For the purpose of this clause shares will include all depository receipts carrying an entitlement to exercise voting rights in the target company;
- (w) “specified” means as specified by the Board;
  - (x) “state-level financial institution” means a Financial Corporation established under section 3 or section 3A and institutions notified under section 46 of the State Financial Corporations

Act, 1951, and includes a development corporation established as a company by a State Government with the object of development of industries or agricultural activities in the state;

- (y) "stock exchange" means a stock exchange which has been granted recognition under section 4 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);
  - (z) "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;
  - (za) "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;
  - (zb) "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;
  - (zc) "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;
  - (zd) "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;
  - (ze) "working day" means any working day of the Board.
- (2) All other expressions unless defined herein shall have the same meaning as have been assigned to them under the Act or the Securities Contracts (Regulation) Act, 1956, or the Companies Act, 1956, or any statutory modification or re-enactment thereto, as the case may be.

## **SUBSTANTIAL ACQUISITION OF SHARES, VOTING RIGHTS OR CONTROL**

### **Substantial acquisition of shares or voting rights [Regulation 3]**

- (1) No acquirer shall acquire shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, entitle them to exercise twenty-five per cent or more of the voting rights in such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.
- (2) No acquirer, who together with persons acting in concert with him, has acquired and holds in accordance with these regulations shares or voting rights in a target company entitling them to exercise twenty-five per cent or more of the voting rights in the target company but less than the maximum permissible non-public shareholding, shall acquire within any financial year additional shares or voting rights in such target company entitling them to exercise more than five per cent of the voting rights, unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations:

**Provided** that such acquirer shall not be entitled to acquire or enter into any agreement to acquire shares or voting rights exceeding such number of shares as would take the aggregate shareholding pursuant to the acquisition above the maximum permissible non-public shareholding.

**Explanation.—**For the purposes of determining the quantum of acquisition of additional voting rights under this sub-regulation,—

- (i) gross acquisitions alone shall be taken into account regardless of any intermittent fall in shareholding or voting rights whether owing to disposal of shares held or dilution of voting rights owing to fresh issue of shares by the target company.

- (ii) in the case of acquisition of shares by way of issue of new shares by the target company or where the target company has made an issue of new shares in any given financial year, the difference between the pre-allotment and the post-allotment percentage voting rights shall be regarded as the quantum of additional acquisition .
- (3) For the purposes of sub-regulation (1) and sub-regulation (2), acquisition of shares by any person, such that the individual shareholding of such person acquiring shares exceeds the stipulated thresholds, shall also be attracting the obligation to make an open offer for acquiring shares of the target company irrespective of whether there is a change in the aggregate shareholding with persons acting in concert.

#### **Acquisition of control [Regulation 4]**

Irrespective of acquisition or holding of shares or voting rights in a target company, no acquirer shall acquire, directly or indirectly, control over such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.

#### **Indirect acquisition of shares or control [Regulation 5]**

- (1) For the purposes of regulation 3 and regulation 4, acquisition of shares or voting rights in, or control over, any company or other entity, that would enable any person and persons acting in concert with him to exercise or direct the exercise of such percentage of voting rights in, or control over, a target company, the acquisition of which would otherwise attract the obligation to make a public announcement of an open offer for acquiring shares under these regulations, shall be considered as an indirect acquisition of shares or voting rights in, or control over the target company.
- (2) Notwithstanding anything contained in these regulations, in the case of an indirect acquisition attracting the provisions of sub-regulation (1) where,—
  - (a) the proportionate net asset value of the target company as a percentage of the consolidated net asset value of the entity or business being acquired;
  - (b) the proportionate sales turnover of the target company as a percentage of the consolidated sales turnover of the entity or business being acquired; or
  - (c) the proportionate market capitalisation of the target company as a percentage of the enterprise value for the entity or business being acquired;

is in excess of eighty per cent, on the basis of the most recent audited annual financial statements, such indirect acquisition shall be regarded as a direct acquisition of the target company for all purposes of these regulations including without limitation, the obligations relating to timing, pricing and other compliance requirements for the open offer.

**Explanation.—** For the purposes of computing the percentage referred to in clause (c) of this sub-regulation, the market capitalisation of the target company shall be taken into account on the basis of the volume-weighted average market price of such shares on the stock exchange for a period of sixty trading days preceding the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain, as traded on the stock exchange where the maximum volume of trading in the shares of the target company are recorded during such period.

#### **Voluntary Offer [Regulation 6]**

- (1) An acquirer, who together with persons acting in concert with him, holds shares or voting rights in a target company entitling them to exercise twenty-five per cent or more but less than the maximum permissible non-public shareholding, shall be entitled to voluntarily make a public announcement of an open offer for acquiring shares in accordance with these regulations,

subject to their aggregate shareholding after completion of the open offer not exceeding the maximum permissible non-public shareholding:

**Provided** that 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:

**Provided further** that during the offer period such acquirer shall not be entitled to acquire any shares otherwise than under the open offer.

- (2) An acquirer and persons acting in concert with him, who have made a public announcement under this regulation to acquire shares of a target company shall not be entitled to acquire any shares of the target company for a period of six months after completion of the open offer except pursuant to another voluntary open offer:

**Provided** that 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.

- (3) Shares acquired through bonus issue or stock splits shall not be considered for purposes of the dis-entitlement set out in this regulation.

#### **Offer Size [Regulation 7]**

- (1) The open offer for acquiring shares to be made by the acquirer and persons acting in concert with him under regulation 3 and regulation 4 shall be for at least twenty six per cent of total shares of the target company, as of tenth working day from the closure of the tendering period:

**Provided** that the total shares of the target company as of tenth working day from the closure of the tendering period shall take into account all potential increases in the number of outstanding shares during the offer period contemplated as of the date of the public announcement:

**Provided further** that the offer size shall be proportionately increased in case of an increase in total number of shares, after the public announcement, which is not contemplated on the date of the public announcement.

- (2) The open offer made under regulation 6 shall be for acquisition of at least such number of shares as would entitle the holder thereof to exercise an additional ten per cent of the total shares of the target company, and shall not exceed such number of shares as would result in the post-acquisition holding of the acquirer and persons acting in concert with him exceeding the maximum permissible non-public shareholding applicable to such target company:

**Provided** that in the event of a competing offer being made, the acquirer who has voluntarily made a public announcement of an open offer under regulation 6 shall be entitled to increase the number of shares for which the open offer has been made to such number of shares as he deems fit:

**Provided further** that such increase in offer size shall have to be made within a period of fifteen working days from the public announcement of a competing offer, failing which the acquirer shall not be entitled to increase the offer size.

- (3) Upon an acquirer opting to increase the offer size under sub-regulation (2), such open offer shall be deemed to have been made under sub-regulation (2) of regulation 3 and the provisions of these regulations shall apply accordingly.
- (4) In the event the shares accepted in the open offer were such that the shareholding of the acquirer taken together with persons acting in concert with him pursuant to completion of the open offer results in their shareholding exceeding the maximum permissible non-public shareholding, the acquirer shall be required to bring down the non-public shareholding to the level specified and within the time permitted under Securities Contract (Regulation) Rules, 1957.



- (5) The acquirer whose shareholding exceeds the maximum permissible non-public shareholding, pursuant to an open offer under these regulations, shall not be eligible to make a voluntary delisting offer under the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009, unless a period of twelve months has elapsed from the date of the completion of the offer period.
- (6) Any open offer made under these regulations shall be made to all shareholders of the target company, other than the acquirer, persons acting in concert with him and the parties to any underlying agreement including persons deemed to be acting in concert with such parties, for the sale of shares of the target company.

#### **Offer Price [Regulation 8]**

- (1) The open offer for acquiring shares under regulation 3, regulation 4, regulation 5 or regulation 6 shall be made at a price not lower than the price determined in accordance with sub-regulation (2) or sub-regulation (3), as the case may be.
- (2) In the case of direct acquisition of shares or voting rights in, or control over the target company, and indirect acquisition of shares or voting rights in, or control over the target company where the parameters referred to in sub-regulation (2) of regulation 5 are met, the offer price shall be the highest of,—
  - (a) the highest negotiated price per share of the target company for any acquisition under the agreement attracting the obligation to make a public announcement of an open offer;
  - (b) the volume-weighted average price paid or payable for acquisitions, whether by the acquirer or by any person acting in concert with him, during the fifty-two weeks immediately preceding the date of the public announcement;
  - (c) the highest price paid or payable for any acquisition, whether by the acquirer or by any person acting in concert with him, during the twenty-six weeks immediately preceding the date of the public announcement;
  - (d) the volume-weighted average market price of such shares for a period of sixty trading days immediately preceding the date of the public announcement as traded on the stock exchange where the maximum volume of trading in the shares of the target company are recorded during such period, provided such shares are frequently traded;
  - (e) where the shares are not frequently traded, the price determined by the acquirer and the manager to the open offer taking into account valuation parameters including, book value, comparable trading multiples, and such other parameters as are customary for valuation of shares of such companies; and
  - (f) the per share value computed under sub-regulation (5), if applicable.
- (3) In the case of an indirect acquisition of shares or voting rights in, or control over the target company, where the parameter referred to in sub-regulation (2) of regulation 5 are not met, the offer price shall be the highest of,—
  - (a) the highest negotiated price per share, if any, of the target company for any acquisition under the agreement attracting the obligation to make a public announcement of an open offer;
  - (b) the volume-weighted average price paid or payable for any acquisition, whether by the acquirer or by any person acting in concert with him, during the fifty-two weeks immediately preceding the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain;

- (c) the highest price paid or payable for any acquisition, whether by the acquirer or by any person acting in concert with him, during the twenty-six weeks immediately preceding the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain;
  - (d) the highest price paid or payable for any acquisition, whether by the acquirer or by any person acting in concert with him, between the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain, and the date of the public announcement of the open offer for shares of the target company made under these regulations;
  - (e) the volume-weighted average market price of the shares for a period of sixty trading days immediately preceding the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain, as traded on the stock exchange where the maximum volume of trading in the shares of the target company are recorded during such period, provided such shares are frequently traded; and
  - (f) the per share value computed under sub-regulation (5).
- (4) In the event the offer price is incapable of being determined under any of the parameters specified in sub-regulation (3), without prejudice to the requirements of sub-regulation (5), the offer price shall be the fair price of shares of the target company to be determined by the acquirer and the manager to the open offer taking into account valuation parameters including, book value, comparable trading multiples, and such other parameters as are customary for valuation of shares of such companies.
- (5) In the case of an indirect acquisition and open offers under sub-regulation (2) of regulation 5 where,—
- (a) the proportionate net asset value of the target company as a percentage of the consolidated net asset value of the entity or business being acquired;
  - (b) the proportionate sales turnover of the target company as a percentage of the consolidated sales turnover of the entity or business being acquired; or
  - (c) the proportionate market capitalization of the target company as a percentage of the enterprise value for the entity or business being acquired;

is in excess of fifteen per cent, on the basis of the most recent audited annual financial statements, the acquirer shall, notwithstanding anything contained in sub-regulation (2) or sub-regulation (3), be required to compute and disclose, in the letter of offer, the per share value of the target company taken into account for the acquisition, along with a detailed description of the methodology adopted for such computation.

**Explanation.—** For the purposes of computing the percentages referred to in clause (c) of this sub-regulation, the market capitalisation of the target company shall be taken into account on the basis of the volume-weighted average market price of such shares on the stock exchange for a period of sixty trading days preceding the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain, as traded on the stock exchange where the maximum volume of trading in the shares of the target company are recorded during such period.

- (6) For the purposes of sub-regulation (2) and sub-regulation (3), where the acquirer or any person acting in concert with him has any outstanding convertible instruments convertible into shares of the target company at a specific price, the price at which such instruments are to be converted

into shares, shall also be considered as a parameter under sub-regulation (2) and sub-regulation (3).

- (7) For the purposes of sub-regulation (2) and sub-regulation (3), the price paid for shares of the target company shall include any price paid or agreed to be paid for the shares or voting rights in, or control over the target company, in any form whatsoever, whether stated in the agreement for acquisition of shares or in any incidental, contemporaneous or collateral agreement, whether termed as control premium or as non-compete fees or otherwise.

- (8) Where the acquirer has acquired or agreed to acquire whether by himself or through or with persons acting in concert with him any shares or voting rights in the target company during the offer period, whether by subscription or purchase, at a price higher than the offer price, the offer price shall stand revised to the highest price paid or payable for any such acquisition:

**Provided** that no such acquisition shall be made after the third working day prior to the commencement of the tendering period and until the expiry of the tendering period.

- (9) The price parameters under sub-regulation (2) and sub-regulation (3) may be adjusted by the acquirer in consultation with the manager to the offer, for corporate actions such as issuances pursuant to rights issue, bonus issue, stock consolidations, stock splits, payment of dividend, demergers and reduction of capital, where the record date for effecting such corporate actions falls prior to three working days before the commencement of the tendering period:

**Provided** that no adjustment shall be made for dividend declared with a record date falling during such period except where the dividend per share is more than fifty per cent higher than the average of the dividend per share paid during the three financial years preceding the date of the public announcement.

- (10) Where the acquirer or persons acting in concert with him acquires shares of the target company during the period of twenty-six weeks after the tendering period at a price higher than the offer price under these regulations, the acquirer and persons acting in concert shall pay the difference between the highest acquisition price and the offer price, to all the shareholders whose shares were accepted in the open offer, within sixty days from the date of such acquisition:

**Provided** that this provision shall not be applicable to acquisitions under another open offer under these regulations or pursuant to the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009, or open market purchases made in the ordinary course on the stock exchanges, not being negotiated acquisition of shares of the target company whether by way of bulk deals, block deals or in any other form.

- (11) Where the open offer is subject to a minimum level of acceptances, the acquirer may, subject to the other provisions of this regulation, indicate a lower price, which will not be less than the price determined under this regulation, for acquiring all the acceptances despite the acceptance falling short of the indicated minimum level of acceptance, in the event the open offer does not receive the minimum acceptance.

- (12) In the case of any indirect acquisition, other than the indirect acquisition referred in sub-regulation (2) of regulation 5, the offer price shall stand enhanced by an amount equal to a sum determined at the rate of ten per cent per annum for the period between the earlier of the date on which the primary acquisition is contracted or the date on which the intention or the decision to make the primary acquisition is announced in the public domain, and the date of the detailed public statement, provided such period is more than five working days.

- (13) The offer price for partly paid up shares shall be computed as the difference between the offer price and the amount due towards calls-in-arrears including calls remaining unpaid with interest, if any, thereon.

- (14) The offer price for equity shares carrying differential voting rights shall be determined by the acquirer and the manager to the open offer with full disclosure of justification for the price so determined, being set out in the detailed public statement and the letter of offer:

**Provided** that such price shall not be lower than the amount determined by applying the percentage rate of premium, if any, that the offer price for the equity shares carrying full voting rights represents to the price parameter computed under clause (d) of sub-regulation 2, or as the case may be, clause (e) of sub-regulation 3, to the volume-weighted average market price of the shares carrying differential voting rights for a period of sixty trading days computed on the same terms as specified in the aforesaid provisions, subject to shares carrying full voting rights and the shares carrying differential voting rights, both being frequently traded shares.

- (15) In the event of any of the price parameters contained in this regulation not being available or denominated in Indian rupees, the conversion of such amount into Indian rupees shall be effected at the exchange rate as prevailing on the date preceding the date of public announcement and the acquirer shall set out the source of such exchange rate in the public announcement, the detailed public statement and the letter of offer.
- (16) For purposes of clause (e) of sub-regulation (2) and sub-regulation (4), the Board may, at the expense of the acquirer, require valuation of the shares by an independent merchant banker other than the manager to the open offer or an independent chartered accountant in practice having a minimum experience of ten years.

#### **Mode of payment [Regulation 9]**

- (1) The offer price may be paid, —
  - (a) in cash;
  - (b) by issue, exchange or transfer of listed shares in the equity share capital of the acquirer or of any person acting in concert;
  - (c) by issue, exchange or transfer of listed secured debt instruments issued by the acquirer or any person acting in concert with a rating not inferior to investment grade as rated by a credit rating agency registered with the Board;
  - (d) by issue, exchange or transfer of convertible debt securities entitling the holder thereof to acquire listed shares in the equity share capital of the acquirer or of any person acting in concert; or
  - (e) a combination of the mode of payment of consideration stated in clause (a), clause (b), clause (c) and clause (d):

**Provided** that where any shares have been acquired or agreed to be acquired by the acquirer and persons acting in concert with him during the fifty-two weeks immediately preceding the date of public announcement constitute more than ten per cent of the voting rights in the target company and has been paid for in cash, the open offer shall entail an option to the shareholders to require payment of the offer price in cash, and a shareholder who has not exercised an option in his acceptance shall be deemed to have opted for receiving the offer price in cash:

**Provided further** that in case of revision in offer price the mode of payment of consideration may be altered subject to the condition that the component of the offer price to be paid in cash prior to such revision is not reduced.

- (2) For the purposes of clause (b), clause (d) and clause (e) of sub-regulation (1), the shares sought to be issued or exchanged or transferred or the shares to be issued upon conversion of other securities, towards payment of the offer price, shall conform to the following requirements, —
  - (a) such class of shares are listed on a stock exchange and frequently traded at the time of the public announcement;
  - (b) such class of shares have been listed for a period of at least two years preceding the date of the public announcement;

- (c) the issuer of such class of shares has redressed at least ninety five per cent of the complaints received from investors by the end of the calendar quarter immediately preceding the calendar month in which the public announcement is made;
  - (d) the issuer of such class of shares has been in material compliance with the listing agreement for a period of at least two years immediately preceding the date of the public announcement:  
**Provided** that in case where the Board is of the view that a company has not been materially compliant with the provisions of the listing agreement, the offer price shall be paid in cash only;
  - (e) the impact of auditors' qualifications, if any, on the audited accounts of the issuer of such shares for three immediately preceding financial years does not exceed five per cent of the net profit or loss after tax of such issuer for the respective years; and
  - (f) the Board has not issued any direction against the issuer of such shares not to access the capital market or to issue fresh shares.
- (3) Where the shareholders have been provided with options to accept payment in cash or by way of securities, or a combination thereof, the pricing for the open offer may be different for each option subject to compliance with minimum offer price requirements under regulation 8:  
**Provided** that the detailed public statement and the letter of offer shall contain justification for such differential pricing.
- (4) In the event the offer price consists of consideration to be paid by issuance of securities, which requires compliance with any applicable law, the acquirer shall ensure that such compliance is completed not later than the commencement of the tendering period:  
**Provided** that in case the requisite compliance is not made by such date, the acquirer shall pay the entire consideration in cash.
- (5) Where listed securities are offered as consideration, the value of such securities shall be higher of:
- (a) the average of the weekly high and low of the closing prices of such securities quoted on the stock exchange during the six months preceding the relevant date;
  - (b) the average of the weekly high and low of the closing prices of such securities quoted on the stock exchange during the two weeks preceding the relevant date; and
  - (c) the volume-weighted average market price for a period of sixty trading days preceding the date of the public announcement, as traded on the stock exchange where the maximum volume of trading in the shares of the company whose securities are being offered as consideration, are recorded during the six-month period prior to relevant date and the ratio of exchange of shares shall be duly certified by an independent merchant banker (other than the manager to the open offer) or an independent chartered accountant having a minimum experience of ten years.

**Explanation.—** For the purposes of this sub-regulation, the “relevant date” shall be the thirtieth day prior to the date on which the meeting of shareholders is held to consider the proposed issue of shares under sub-section (1A) of Section 81 of the Companies Act, 1956.

#### **General exemptions [Regulation 10]**

- (1) The following acquisitions shall be exempt from the obligation to make an open offer under regulation 3 and regulation 4 subject to fulfillment of the conditions stipulated therefore,—
- (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 agreement or these regulations for not less than three years prior to the proposed acquisition;
- (iii) a company, its subsidiaries, its holding company, other subsidiaries of such holding company, persons holding not less than fifty per cent of the equity shares of such company, other companies in which such persons hold not less than fifty per cent of the equity shares, and their subsidiaries subject to control over such qualifying persons being exclusively held by the same persons;
- (iv) persons acting in concert for not less than three years prior to the proposed acquisition, and disclosed as such pursuant to filings under the listing agreement;
- (v) shareholders of a target company who have been persons acting in concert for a period of not less than three years prior to the proposed acquisition and are disclosed as such pursuant to filings under 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:

**Provided** that for purposes of availing of the exemption under this clause,—

- (i) If the shares of the target company are frequently traded, the acquisition price per share shall not be higher by more than twenty-five per cent of the volume-weighted average market price for a period of sixty trading days preceding the date of issuance of notice for the proposed inter se transfer under sub-regulation (5), as traded on the stock exchange where the maximum volume of trading in the shares of the target company are recorded during such period, and if the shares of the target company are infrequently traded, the acquisition price shall not be higher by more than twenty-five percent of the price determined in terms of clause (e) of sub-regulation (2) of regulation 8; and
  - (ii) the transferor and the transferee shall have complied with applicable disclosure requirements set out in Chapter V.
- (b) acquisition in the ordinary course of business by,—
- (i) an underwriter registered with the Board by way of allotment pursuant to an underwriting agreement in terms of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;
  - (ii) a stock broker registered with the Board 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 the Board or a nominated investor in the process of market making or subscription to the unsubscribed portion of issue in terms of Chapter XB of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;
  - (iv) any person acquiring shares pursuant to a scheme of safety net in terms of regulation 44 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;
  - (v) a merchant banker registered with the Board acting as a stabilising agent or by the promoter or pre-issue shareholder in terms of regulation 45 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;



- (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:
- Provided** that,—
- (i) both the acquirer and the seller are the same at all the stages of acquisition; and
  - (ii) full disclosures of all the subsequent stages of acquisition, if any, have been made in the public announcement of the open offer and in the letter of offer.
- (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 competent authority 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 competent authority 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.
- (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 the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009;
- (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 87 of the Companies Act, 1956.
- (i) Conversion of debt into equity under Strategic Debt Restructuring Scheme - Acquisition of equity shares by the consortium of banks, financial institutions and other secured lenders pursuant to conversion of their debt as part of the Strategic Debt Restructuring Scheme in accordance with the guidelines specified by the Reserve Bank of India:

**Provided** that the conditions specified under sub-regulation (5) or (6) of regulation 70 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, as may be applicable, 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.
- (2) The acquisition of shares of a target company, not involving a change of control over such target company, pursuant to a scheme of corporate debt restructuring in terms of the Corporate Debt Restructuring Scheme notified by the Reserve Bank of India vide circular no. B.P.BC 15/21.04, 114/2001 dated August 23, 2001, or any modification or re-notification thereto provided such scheme has been authorised by shareholders by way of a special resolution passed by postal ballot, shall be exempted from the obligation to make an open offer under regulation 3.
- (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 sub-regulation (1) of regulation 3, pursuant to buy-back of shares by the target company shall be exempt from the obligation to make an open offer provided such shareholder reduces his shareholding such that his voting rights fall to below the threshold referred to in sub-regulation (1) of regulation 3 within ninety days from the date of the closure of the said buy-back offer.
- (4) The following acquisitions shall be exempt from the obligation to make an open offer under sub-regulation (2) of regulation 3,—
  - (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, subject to fulfillment of the following conditions,—
    - (i) the acquirer has not renounced any of his entitlements in such rights issue; and
    - (ii) the price at which the rights issue is made is not higher than the ex-rights price of the shares of the target company, being the sum of,—
      - (A) the volume weighted average market price of the shares of the target company during a period of sixty trading days ending on the day prior to the date of determination of the rights issue price, multiplied by the number of shares outstanding prior to the rights issue, divided by the total number of shares outstanding after allotment under the rights issue:
 

**Provided** that such volume weighted average market price shall be determined on the basis of trading on the stock exchange where the maximum volume of trading in the shares of such target company is recorded during such period; and
      - (B) the price at which the shares are offered in the rights issue, multiplied by the number of shares so offered in the rights issue divided by the total number of shares outstanding after allotment under the rights issue:
- (c) increase in voting rights in a target company of any shareholder pursuant to buy-back of shares:
 

**Provided** that,—

  - (i) such shareholder has not voted in favour of the resolution authorising the buy-back of securities under section 77A of the Companies Act, 1956;
  - (ii) in the case of a shareholder resolution, voting is by way of postal ballot;
  - (iii) where a resolution of shareholders is not required for the buy-back, such shareholder, in his capacity as a director, or any other interested director has not voted in favour

of the resolution of the board of directors of the target company authorising the buy-back of securities under section 77A of the Companies Act, 1956; and

- (iv) the increase in voting rights does not result in an acquisition of control by such shareholder over the target company:

**Provided further** that where the aforesaid conditions are not met, in the event such shareholder reduces his shareholding such that his voting rights fall below the level at which the obligation to make an open offer would be attracted under sub-regulation (2) of regulation 3, within ninety days from the date of closure of the buy-back offer by the target company, the shareholder shall be exempt from the obligation to make an open offer;

- (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 Board, 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.
- (5) In respect of acquisitions under clause (a) of sub-regulation (1), and clauses (e) and (f) of sub-regulation (4), the acquirer shall intimate the stock exchanges where the shares of the target company are listed, the details of the proposed acquisition in such form as may be specified, at least four working days prior to the proposed acquisition, and the stock exchange shall forthwith disseminate such information to the public.
  - (6) In respect of any acquisition made pursuant to exemption provided for in this regulation, the acquirer shall file a report with the stock exchanges where the shares of the target company are listed, in such form as may be specified not later than four working days from the acquisition, and the stock exchange shall forthwith disseminate such information to the public.
  - (7) In respect of any acquisition of or increase in voting rights pursuant to exemption provided for in clause (a) of sub-regulation (1), sub-clause (iii) of clause (d) of sub-regulation (1), clause (h) of sub-regulation (1), sub-regulation (2), sub-regulation (3) and clause (c) of sub-regulation (4), clauses (a), (b) and (f) of sub-regulation (4), the acquirer shall, within twenty-one working days of the date of acquisition, submit a report in such form as may be specified along with supporting documents to the Board giving all details in respect of acquisitions, along with a non-refundable fee of rupees twenty five thousand by way of a banker's cheque or demand draft payable in Mumbai in favour of the Board.

**Explanation.**—For the purposes of sub-regulation (5), sub-regulation (6) and sub-regulation (7) in the case of convertible securities, the date of the acquisition shall be the date of conversion of such securities.

#### **Exemptions by the Board [Regulation 11]**

- (1) The Board may for reasons recorded in writing, grant exemption from the obligation to make an open offer for acquiring shares under these regulations subject to such conditions as the Board deems fit to impose in the interests of investors in securities and the securities market.
- (2) The Board may for reasons recorded in writing, grant a relaxation from strict compliance with any procedural requirement under Chapter III and Chapter IV subject to such conditions as the Board

deems fit to impose in the interests of investors in securities and the securities market on being satisfied that,—

- (a) the target company is a company in respect of which the Central Government or State Government or any other regulatory authority has superseded the board of directors of the target company and has appointed new directors under any law for the time being in force, if,—
  - (i) such board of directors has formulated a plan which provides for transparent, open, and competitive process for acquisition of shares or voting rights in, or control over the target company to secure the smooth and continued operation of the target company in the interests of all stakeholders of the target company and such plan does not further the interests of any particular acquirer;
  - (ii) the conditions and requirements of the competitive process are reasonable and fair;
  - (iii) the process adopted by the board of directors of the target company provides for details including the time when the open offer for acquiring shares would be made, completed and the manner in which the change in control would be effected; and
- (b) the provisions of Chapter III and Chapter IV are likely to act as impediment to implementation of the plan of the target company and exemption from strict compliance with one or more of such provisions is in public interest, the interests of investors in securities and the securities market.

- (3) For seeking exemption under sub-regulation (1), the acquirer shall, and for seeking relaxation under sub-regulation (2) the target company shall file an application with the Board, supported by a duly sworn affidavit, giving details of the proposed acquisition and the grounds on which the exemption has been sought.
- (4) The acquirer or the target company, as the case may be, shall along with the application referred to under sub-regulation (3) pay a non-refundable fee of rupees fifty thousand, by way of a banker's cheque or demand draft payable in Mumbai in favour of the Board.
- (5) The Board may after affording reasonable opportunity of being heard to the applicant and after considering all the relevant facts and circumstances, pass a reasoned order either granting or rejecting the exemption or relaxation sought as expeditiously as possible:

**Provided** that the Board may constitute a panel of experts to which an application for an exemption under sub-regulation (1) may, if considered necessary, be referred to make recommendations on the application to the Board.

- (6) The order passed under sub-regulation (5) shall be hosted by the Board on its official website.

## **OPEN OFFER PROCESS**

### **Manager to the open offer [Regulation 12]**

- (1) Prior to making a public announcement, the acquirer shall appoint a merchant banker registered with the Board, who is not an associate of the acquirer, as the manager to the open offer.

**Explanation.**—For the purposes of this regulation the term “associate” has the same meaning as in the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992.

- (2) The public announcement of the open offer for acquiring shares required under these regulations shall be made by the acquirer through such manager to the open offer.

### **Timing [Regulation 13]**

- (1) The public announcement referred to in regulation 3 and regulation 4 shall be made in accordance with regulation 14 and regulation 15, on the date of agreeing to acquire shares or voting rights in, or control over the target company.

- (2) Such public announcement,—
- (a) in the case of market purchases, shall be made prior to placement of the purchase order with the stock broker to acquire the shares, that would take the entitlement to voting rights beyond the stipulated thresholds;
  - (b) pursuant to an acquirer acquiring shares or voting rights in, or control over the target company upon converting convertible securities without a fixed date of conversion or upon conversion of depository receipts for the underlying shares of the target company shall be made on the same day as the date of exercise of the option to convert such securities into shares of the target company;
  - (c) pursuant to an acquirer acquiring shares or voting rights in, or control over the target company upon conversion of convertible securities with a fixed date of conversion shall be made on the second working day preceding the scheduled date of conversion of such securities into shares of the target company;
  - (d) pursuant to a disinvestment shall be made on the same day as the date of executing the agreement for acquisition of shares or voting rights in or control over the target company;
  - (e) in the case of indirect acquisition of shares or voting rights in, or control over the target company where none of the parameters referred to in sub-regulation (2) of regulation 5 are met, may be made at any time within four working days from the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain;
  - (f) in the case of indirect acquisition of shares or voting rights in, or control over the target company where any of the parameters referred to in sub-regulation (2) of regulation 5 are met shall be made on the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain;
  - (g) pursuant to an acquirer acquiring shares or voting rights in, or control over the target company, under preferential issue, shall be made on the date on which the board of directors of the target company authorises such preferential issue;
  - (h) the public announcement pursuant to an increase in voting rights consequential to a buy-back not qualifying for exemption under regulation 10, shall be made not later than the ninetieth day from the date of closure of the buy-back offer by the target company;
  - (i) the public announcement pursuant to any acquisition of shares or voting rights in or control over the target company where the specific date on which title to such shares, voting rights or control is acquired is beyond the control of the acquirer, shall be made not later than two working days from the date of receipt of intimation of having acquired such title.
- (2A) Notwithstanding anything contained in sub-regulation (2), a public announcement referred to in regulation 3 and regulation 4 for a proposed acquisition of shares or voting rights in or control over the target company through a combination of,—
- (i) an agreement and any one or more modes of acquisition referred to in sub-regulation (2) of regulation 13, or
  - (ii) any one or more modes of acquisition referred in clause (a) to (i) of sub-regulation (2) of regulation 13,
- shall be made on the date of first such acquisition, provided the acquirer discloses in the public announcement the details of the proposed subsequent acquisition.
- (3) The public announcement made under regulation 6 shall be made on the same day as the date on which the acquirer takes the decision to voluntarily make a public announcement of an open offer for acquiring shares of the target company.

- (4) Pursuant to the public announcement made under sub-regulation (1) and sub-regulation (3), a detailed public statement shall be published by the acquirer through the manager to the open offer in accordance with regulation 14 and regulation 15, not later than five working days of the public announcement:

**Provided** that the detailed public statement pursuant to a public announcement made under clause (e) of sub-regulation (2) shall be made not later than five working days of the completion of the primary acquisition of shares or voting rights in, or control over the company or entity holding shares or voting rights in, or control over the target company.

**Explanation.—** It is clarified that in the event the acquirer does not succeed in acquiring the ability to exercise or direct the exercise of voting rights in, or control over the target company, the acquirer shall not be required to make a detailed public statement of an open offer for acquiring shares under these regulations.

#### **Publication [Regulation 14]**

- (1) The public announcement shall be sent to all the stock exchanges on which the shares of the target company are listed, and the stock exchanges shall forthwith disseminate such information to the public.
- (2) A copy of the public announcement shall be sent to the Board and to the target company at its registered office within one working day of the date of the public announcement.
- (3) The detailed public statement pursuant to the public announcement referred to in sub-regulation (4) of regulation 13 shall be published in all editions of any one English national daily with wide circulation, any one Hindi national daily with wide circulation, and any one regional language daily with wide circulation at the place where the registered office of the target company is situated and one regional language daily at the place of the stock exchange where the maximum volume of trading in the shares of the target company are recorded during the sixty trading days preceding the date of the public announcement.
- (4) Simultaneously with publication of such detailed public statement in the newspapers, a copy of the same shall be sent to,—
  - (i) the Board through the manager to the open offer,
  - (ii) all the stock exchanges on which the shares of the target company are listed, and the stock exchanges shall forthwith disseminate such information to the public,
  - (iii) the target company at its registered office, and the target company shall forthwith circulate it to the members of its board.

#### **Contents [Regulation 15]**

- (1) The public announcement shall contain such information as may be specified, including the following,—
  - (a) name and identity of the acquirer and persons acting in concert with him;
  - (b) name and identity of the sellers, if any;
  - (c) nature of the proposed acquisition such as purchase of shares or allotment of shares, or any other means of acquisition of shares or voting rights in, or control over the target company;
  - (d) the consideration for the proposed acquisition that attracted the obligation to make an open offer for acquiring shares, and the price per share, if any;
  - (e) the offer price, and mode of payment of consideration; and
  - (f) offer size, and conditions as to minimum level of acceptances, if any.



- (2) The detailed public statement pursuant to the public announcement shall contain such information as may be specified in order to enable shareholders to make an informed decision with reference to the open offer.
- (3) The public announcement of the open offer, the detailed public statement, and any other statement, advertisement, circular, brochure, publicity material or letter of offer issued in relation to the acquisition of shares under these regulations shall not omit any relevant information, or contain any misleading information.

#### **Filing of letter of offer with the Board [Regulation 16]**

- (1) Within five working days from the date of the detailed public statement made under sub-regulation (4) of regulation 13, the acquirer shall, through the manager to the open offer, file with the Board, a draft of the letter of offer containing such information as may be specified along with a non-refundable fee, as per the following scale, by way of a banker's cheque or demand draft payable in Mumbai in favour of the Board,—

Sl. No.	Consideration payable under the Open Offer	Fee (₹)
a.	Upto ten crore rupees.	One lakh twenty five thousands rupees (₹ 1,25,000)
b.	More than ten crore rupees, but less than or equal to one thousand crore rupees.	One Lakh twenty five thousands rupees (₹1,25,000) plus 0.025 per cent of the portion of the offer size in excess of ten crore rupees ( ₹10,00,00,000).
c.	More than one thousand crore rupees, but less than or equal to five thousand crore rupees.	One crore twenty five lakh rupees (₹1,25,00,000) plus 0.03125 per cent of the portion of the offer size in excess of one thousand crore rupees (₹1000,00 ,00,000).
d.	More than five thousand crore rupees.	Two crore fifty lakh rupees (₹ 2,50,00,000) plus 0.01 per cent of the portion of the offer size in excess s of five thousand crore rupees (₹ 5000,00,00,000), subject to a maximum of three crore rupees (₹ 3,00,00,000).

- (2) The consideration payable under the open offer shall be calculated at the offer price, assuming full acceptance of the open offer, and in the event the open offer is subject to differential pricing, shall be computed at the highest offer price, irrespective of manner of payment of the consideration:

**Provided** that in the event of consideration payable under the open offer being enhanced owing to a revision to the offer price or offer size the fees payable shall stand revised accordingly, and shall be paid within five working days from the date of such revision.

- (3) The manager to the open offer shall provide soft copies of the public announcement, the detailed public statement and the draft letter of offer in accordance with such specifications as may be specified, and the Board shall upload the same on its website.
- (4) The Board shall give its comments on the draft letter of offer as expeditiously as possible but not later than fifteen working days of the receipt of the draft letter of offer and in the event of no comments being issued by the Board within such period, it shall be deemed that the Board does not have comments to offer:

**Provided** that in the event the Board has sought clarifications or additional information from the manager to the open offer, the period for issuance of comments shall be extended to the fifth working day from the date of receipt of satisfactory reply to the clarification or additional information sought.

**Provided further** that in the event the Board specifies any changes, the manager to the open offer and the acquirer shall carry out such changes in the letter of offer before it is dispatched to the shareholders.

- (5) In the case of competing offers, the Board shall provide its comments on the draft letter of offer in respect of each competing offer on the same day.
- (6) In the event the disclosures in the draft letter of offer are inadequate the Board may call for a revised letter of offer and shall deal with the revised letter of offer in accordance with sub-regulation (4).

#### **Provision of escrow [Regulation 17]**

- (1) Not later than two working days prior to the date of the detailed public statement of the open offer for acquiring shares, the acquirer shall create an escrow account towards security for performance of his obligations under these regulations, and deposit in escrow account such aggregate amount as per the following scale:

Sl. No.	Consideration payable under the Open Offer	Escrow Amount
a.	On the first five hundred crore rupees	an amount equal to twenty-five per cent of the consideration
b.	On the balance consideration	an additional amount equal to ten per cent of the balance consideration

**Provided** that where an open offer is made conditional upon minimum level of acceptance, hundred percent of the consideration payable in respect of minimum level of acceptance or fifty per cent of the consideration payable under the open offer, whichever is higher, shall be deposited in cash in the escrow account.

- (2) The consideration payable under the open offer shall be computed as provided for in sub-regulation (2) of regulation 16 and in the event of an upward revision of the offer price or of the offer size, the value of the escrow amount shall be computed on the revised consideration calculated at such revised offer price, and the additional amount shall be brought into the escrow account prior to effecting such revision.
- (3) The escrow account referred to in sub-regulation (1) may be in the form of,—
  - (a) cash deposited with any scheduled commercial bank;
  - (b) bank guarantee issued in favour of the manager to the open offer by any scheduled commercial bank; or
  - (c) deposit of frequently traded and freely transferable equity shares or other freely transferable securities with appropriate margin:

**Provided** that securities sought to be provided towards escrow account under clause (c) shall be required to conform to the requirements set out in sub-regulation (2) of regulation 9.

- (4) In the event of the escrow account being created by way of a bank guarantee or by deposit of securities, the acquirer shall also ensure that at least one per cent of the total consideration payable is deposited in cash with a scheduled commercial bank as a part of the escrow account.
- (5) For such part of the escrow account as is in the form of a cash deposit with a scheduled commercial bank, the acquirer shall while opening the account, empower the manager to the open offer to instruct the bank to issue a banker's cheque or demand draft or to make payment of the amounts lying to the credit of the escrow account, in accordance with requirements under these regulations.

- (6) For such part of the escrow account as is in the form of a bank guarantee, such bank guarantee shall be in favour of the manager to the open offer and shall be kept valid throughout the offer period and for an additional period of thirty days after completion of payment of consideration to shareholders who have tendered their shares in acceptance of the open offer.
- (7) For such part of the escrow account as is in the form of securities, the acquirer shall empower the manager to the open offer to realise the value of such escrow account by sale or otherwise, and in the event there is any shortfall in the amount required to be maintained in the escrow account, the manager to the open offer shall be liable to make good such shortfall.
- (8) The manager to the open offer shall not release the escrow account until the expiry of thirty days from the completion of payment of consideration to shareholders who have tendered their shares in acceptance of the open offer, save and except for transfer of funds to the special escrow account as required under regulation 21.
- (9) In the event of non-fulfillment of obligations under these regulations by the acquirer the Board may direct the manager to the open offer to forfeit the escrow account or any amounts lying in the special escrow account, either in full or in part.
- (10) The escrow account deposited with the bank in cash shall be released only in the following manner,—
  - (a) the entire amount to the acquirer upon withdrawal of offer in terms of regulation 23 as certified by the manager to the open offer:  
**Provided** that in the event the withdrawal is pursuant to clause (c) of sub-regulation (1) of regulation 23, the manager to the open offer shall release the escrow account upon receipt of confirmation of such release from the Board;
  - (b) for transfer of an amount not exceeding ninety per cent of the escrow account, to the special escrow account in accordance with regulation 21;
  - (c) to the acquirer, the balance of the escrow account after transfer of cash to the special escrow account, on the expiry of thirty days from the completion of payment of consideration to shareholders who have tendered their shares in acceptance of the open offer, as certified by the manager to the open offer;
  - (d) the entire amount to the acquirer upon the expiry of thirty days from the completion of payment of consideration to shareholders who have tendered their shares in acceptance of the open offer, upon certification by the manager to the open offer, where the open offer is for exchange of shares or other secured instruments;
  - (e) the entire amount to the manager to the open offer, in the event of forfeiture for non-fulfillment of any of the obligations under these regulations, for distribution in the following manner, after deduction of expenses, if any, of registered market intermediaries associated with the open offer,—
    - (i) one third of the escrow account to the target company;
    - (ii) one third of the escrow account to the Investor Protection and Education Fund established under the Securities and Exchange Board of India (Investor Protection and Education Fund) Regulations, 2009; and
    - (iii) one third of the escrow account to be distributed pro-rata among the shareholders who have accepted the open offer.

#### **Other procedures [Regulation 18]**

- (1) Simultaneously with the filing of the draft letter of offer with the Board under sub-regulation (1) of regulation 16, the acquirer shall send a copy of the draft letter of offer to the target company at its registered office address and to all stock exchanges where the shares of the target company are listed.

- (2) The letter of offer shall be dispatched to the shareholders whose names appear on the register of members of the target company as of the identified date, not later than seven working days from the receipt of comments from the Board or where no comments are offered by the Board, within seven working days from the expiry of the period stipulated in sub-regulation (4) of regulation 16:

**Provided** that where local laws or regulations of any jurisdiction outside India may expose the acquirer or the target company to material risk of civil, regulatory or criminal liabilities in the event the letter of offer in its final form were to be sent without material amendments or modifications into such jurisdiction, and the shareholders resident in such jurisdiction hold shares entitling them to less than five per cent of the voting rights of the target company, the acquirer may refrain from dispatch of the letter of offer into such jurisdiction:

**Provided further** that every person holding shares, regardless of whether he held shares on the identified date or has not received the letter of offer, shall be entitled to tender such shares in acceptance of the open offer.

- (3) Simultaneously with the dispatch of the letter of offer in terms of sub-regulation (2), the acquirer shall send the letter of offer to the custodian of shares underlying depository receipts, if any, of the target company.
- (4) Irrespective of whether a competing offer has been made, an acquirer may make upward revisions to the offer price, and subject to the other provisions of these regulations, to the number of shares sought to be acquired under the open offer, at any time prior to the commencement of the last three working days before the commencement of the tendering period.
- (5) In the event of any revision of the open offer, whether by way of an upward revision in offer price, or of the offer size, the acquirer shall,—
- (a) make corresponding increases to the amount kept in escrow account under regulation 17 prior to such revision;
  - (b) make an announcement in respect of such revisions in all the newspapers in which the detailed public statement pursuant to the public announcement was made; and
  - (c) simultaneously with the issue of such an announcement, inform the Board, all the stock exchanges on which the shares of the target company are listed, and the target company at its registered office.
- (6) The acquirer shall disclose during the offer period every acquisition made by the acquirer or persons acting in concert with him of any shares of the target company in such form as may be specified, to each of the stock exchanges on which the shares of the target company are listed and to the target company at its registered office within twenty-four hours of such acquisition, and the stock exchanges shall forthwith disseminate such information to the public:

**Provided** that the acquirer and persons acting in concert with him shall not acquire or sell any shares of the target company during the period between three working days prior to the commencement of the tendering period and until the expiry of the tendering period.

- (7) The acquirer shall issue an advertisement in such form as may be specified, one working day before the commencement of the tendering period, announcing the schedule of activities for the open offer, the status of statutory and other approvals, if any, whether for the acquisition attracting the obligation to make an open offer under these regulations or for the open offer, unfulfilled conditions, if any, and their status, the procedure for tendering acceptances and such other material detail as may be specified:

**Provided** that such advertisement shall be,—

- (a) published in all the newspapers in which the detailed public statement pursuant to the public announcement was made; and

- (b) simultaneously sent to the Board, all the stock exchanges on which the shares of the target company are listed, and the target company at its registered office.
- (8) The tendering period shall start not later than twelve working days from date of receipt of comments from the Board under sub-regulation (4) of regulation 16 and shall remain open for ten working days.
- (9) Shareholders who have tendered shares in acceptance of the open offer shall not be entitled to withdraw such acceptance during the tendering period.
- (10) The acquirer shall, within ten working days from the last date of the tendering period, complete all requirements under these regulations and other applicable law relating to the open offer including payment of consideration to the shareholders who have accepted the open offer.
- (11) The acquirer shall be responsible to pursue all statutory approvals required by the acquirer in order to complete the open offer without any default, neglect or delay:

**Provided** that where the acquirer is unable to make the payment to the shareholders who have accepted the open offer within such period owing to non-receipt of statutory approvals required by the acquirer, the Board may, where it is satisfied that such non-receipt was not attributable to any willful default, failure or neglect on the part of the acquirer to diligently pursue such approvals, grant extension of time for making payments, subject to the acquirer agreeing to pay interest to the shareholders for the delay at such rate as may be specified:

**Provided further** that where the statutory approval extends to some but not all shareholders, the acquirer shall have the option to make payment to such shareholders in respect of whom no statutory approvals are required in order to complete the open offer.

- (12) (a) The acquirer shall issue a post offer advertisement in such form as may be specified within five working days after the offer period, giving details including aggregate number of shares tendered, accepted, date of payment of consideration.
- (b) Such advertisement shall be,—
  - (i) published in all the newspapers in which the detailed public statement pursuant to the public announcement was made; and
  - (ii) simultaneously sent to the Board, all the stock exchanges on which the shares of the target company are listed, and the target company at its registered office.

#### **Conditional offer [Regulation 19]**

- (1) An acquirer may make an open offer conditional as to the minimum level of acceptance:

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

- (2) Where an open offer is made conditional upon minimum level of acceptances, the acquirer and persons acting in concert with him shall not acquire, during the offer period, any shares in the target company except under the open offer and any underlying agreement for the sale of shares of the target company pursuant to which the open offer is made.

#### **Competing offers [Regulation 20]**

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

- (2) The open offer made under sub-regulation (1) shall be for such number of shares which, when taken together with shares held by such acquirer along with persons acting in concert with him, shall be at least equal to the holding of the acquirer who has made the first public announcement, including the number of shares proposed to be acquired by him under the offer and any underlying agreement for the sale of shares of the target company pursuant to which the open offer is made.
- (3) Notwithstanding anything contained in these regulations, an open offer made within the period referred to in sub-regulation (1) shall not be regarded as a voluntary open offer under regulation 6, and the provisions of these regulations shall apply accordingly.
- (4) Every open offer made under sub-regulation (1) and the open offer first made shall be regarded as competing offers for purposes of these regulations.
- (5) No person shall be entitled to 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, after the period of fifteen working days referred to in sub-regulation (1) and until the expiry of the offer period for such open offer.
- (6) Unless the open offer first made is an open offer conditional as to the minimum level of acceptances, no acquirer making a competing offer may be made conditional as to the minimum level of acceptances.
- (7) No person shall be entitled to 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 under these regulations until the expiry of the offer period where,—
  - (a) the open offer is for acquisition of shares pursuant to disinvestment, in terms of clause (d) of sub-regulation (2) of regulation 13; or
  - (b) the open offer is pursuant to a relaxation from strict compliance with the provisions of Chapter III or Chapter IV granted by the Board under sub-regulation (2) of regulation 11.
- (8) The schedule of activities and the tendering period for all competing offers shall be carried out with identical timelines and the last date for tendering shares in acceptance of the every competing offer shall stand revised to the last date for tendering shares in acceptance of the competing offer last made.
- (9) Upon the public announcement of a competing offer, an acquirer who had made a preceding competing offer shall be entitled to revise the terms of his open offer provided the revised terms are more favourable to the shareholders of the target company:  
**Provided** that the acquirers making the competing offers shall be entitled to make upward revisions of the offer price at any time up to three working days prior to the commencement of the tendering period.
- (10) Except for variations made under this regulation, all the provisions of these regulations shall apply to every competing offer.

#### **Payment of consideration [Regulation 21]**

- (1) For the amount of consideration payable in cash, the acquirer shall open a special escrow account with a banker to an issue registered with the Board and deposit therein, such sum as would, together with cash transferred under clause (b) of sub-regulation (10) of regulation 17, make up the entire sum due and payable to the shareholders as consideration payable under the open offer, and empower the manager to the offer to operate the special escrow account on behalf of the acquirer for the purposes under these regulations.
- (2) Subject to provisos to sub-regulation (11) of regulation 18, the acquirer shall complete payment of consideration whether in the form of cash, or as the case may be, by issue, exchange or



transfer of securities, to all shareholders who have tendered shares in acceptance of the open offer, within ten working days of the expiry of the tendering period.

- (3) Unclaimed balances, if any, lying to the credit of the special escrow account referred to in sub-regulation (1) at the end of seven years from the date of deposit thereof, shall be transferred to the Investor Protection and Education Fund established under the Securities and Exchange Board of India (Investor Protection and Education Fund) Regulations, 2009.

### **Completion of acquisition [Regulation 22]**

- (1) The acquirer shall not complete the acquisition of shares or voting rights in, or control over, the target company, whether by way of subscription to shares or a purchase of shares attracting the obligation to make an open offer for acquiring shares, until the expiry of the offer period:

**Provided** that in case of an offer made under sub-regulation (1) of regulation 20, pursuant to a preferential allotment, the offer shall be completed within the period as provided under sub-regulation (1) of regulation 74 of Securities and Exchange Board of India (Issue of Capital and Disclosure) Regulations, 2009.

- (2) Notwithstanding anything contained in sub-regulation (1), subject to the acquirer depositing in the escrow account under regulation 17, cash of an amount equal to one hundred per cent of the consideration payable under the open offer assuming full acceptance of the open offer, the parties to such agreement may after the expiry of twenty-one working days from the date of detailed public statement, act upon the agreement and the acquirer may complete the acquisition of shares or voting rights in, or control over the target company as contemplated.
- (2A) Notwithstanding anything contained in sub-regulation (1), an acquirer may acquire shares of the target company through preferential issue or through the stock exchange settlement process, other than through bulk deals or block deals, subject to , -
  - (i) such shares being kept in an escrow account,
  - (ii) the acquirer not exercising any voting rights over such shares kept in the escrow account:

Provided that such shares may be transferred to the account of the acquirer, subject to the acquirer complying with requirements specified in sub-regulation (2).

- (3) The acquirer shall complete the acquisitions contracted under any agreement attracting the obligation to make an open offer not later than twenty-six weeks from the expiry of the offer period:

**Provided** that in the event of any extraordinary and supervening circumstances rendering it impossible to complete such acquisition within such period, the Board may for reasons to be published, may grant an extension of time by such period as it may deem fit in the interests of investors in securities and the securities market.

### **Withdrawal of open offer [Regulation 23]**

- (1) An open offer for acquiring shares once made shall not be withdrawn except under any of the following circumstances,—
  - (a) statutory approvals required for the open offer or for effecting the acquisitions attracting the obligation to make an open offer under these regulations having been finally refused, subject to such requirements for approval having been specifically disclosed in the detailed public statement and the letter of offer;
  - (b) the acquirer, being a natural person, has died;
  - (c) any condition stipulated in the agreement for acquisition attracting the obligation to make the open offer is not met for reasons outside the reasonable control of the acquirer, and such agreement is rescinded, subject to such conditions having been specifically disclosed in the detailed public statement and the letter of offer; or

Provided that an acquirer shall not withdraw an open offer pursuant to a public announcement made under clause (g) of sub-regulation (2) of regulation 13, even if the proposed acquisition through the preferential issue is not successful.

- (d) such circumstances as in the opinion of the Board, merit withdrawal.

**Explanation.—** For the purposes of clause (d) of sub-regulation (1), the Board shall pass a reasoned order permitting withdrawal, and such order shall be hosted by the Board on its official website.

- (2) In the event of withdrawal of the open offer, the acquirer shall through the manager to the open offer, within two working days,—
- (a) make an announcement in the same newspapers in which the public announcement of the open offer was published, providing the grounds and reasons for withdrawal of the open offer; and
  - (b) simultaneously with the announcement, inform in writing to,—
    - (i) the Board;
    - (ii) all the stock exchanges on which the shares of the target company are listed, and the stock exchanges shall forthwith disseminate such information to the public; and
    - (iii) the target company at its registered office.

## OTHER OBLIGATIONS

### Directors of the target company [Regulation 24]

- (1) During the offer period, no person representing the acquirer or any person acting in concert with him shall be appointed as director on the board of directors of the target company, whether as an additional director or in a casual vacancy:

**Provided** that after an initial period of fifteen working days from the date of detailed public statement, appointment of persons representing the acquirer or persons acting in concert with him on the board of directors may be effected in the event the acquirer deposits in cash in the escrow account referred to in regulation 17, one hundred per cent of the consideration payable under the open offer:

**Provided further** that where the acquirer has specified conditions to which the open offer is subject in terms of clause (c) of sub-regulation (1) of regulation 23, no director representing the acquirer may be appointed to the board of directors of the target company during the offer period unless the acquirer has waived or attained such conditions and complies with the requirement of depositing cash in the escrow account.

- (2) Where an open offer is made conditional upon minimum level of acceptances, the acquirer and persons acting in concert shall, notwithstanding anything contained in these regulations, and regardless of the size of the cash deposited in the escrow account referred to regulation 17, not be entitled to appoint any director representing the acquirer or any person acting in concert with him on the board of directors of the target company during the offer period.
- (3) During the pendency of competing offers, notwithstanding anything contained in these regulations, and regardless of the size of the cash deposited in the escrow account referred to in regulation 17, by any acquirer or person acting in concert with him, there shall be no induction of any new director to the board of directors of the target company:

**Provided** that in the event of death or incapacitation of any director, the vacancy arising therefrom may be filled by any person subject to approval of such appointment by shareholders of the target company by way of a postal ballot.

- (4) In the event the acquirer or any person acting in concert is already represented by a director on the board of the target company, such director shall not participate in any deliberations of the board of directors of the target company or vote on any matter in relation to the open offer.

#### **Obligations of the acquirer [Regulation 25]**

- (1) Prior to making the public announcement of an open offer for acquiring shares under these regulations, the acquirer shall ensure that firm financial arrangements have been made for fulfilling the payment obligations under the open offer and that the acquirer is able to implement the open offer, subject to any statutory approvals for the open offer that may be necessary.
- (2) In the event the acquirer has not declared an intention in the detailed public statement and the letter of offer to alienate any material assets of the target company or of any of its subsidiaries whether by way of sale, lease, encumbrance or otherwise outside the ordinary course of business, the acquirer, where he has acquired control over the target company, shall be debarred from causing such alienation for a period of two years after the offer period:

**Provided** that in the event the target company or any of its subsidiaries is required to so alienate assets despite the intention to alienate not having been expressed by the acquirer, such alienation shall require a special resolution passed by shareholders of the target company, by way of a postal ballot and the notice for such postal ballot shall inter alia contain reasons as to why such alienation is necessary.

- (3) The acquirer shall ensure that the contents of the public announcement, the detailed public statement, the letter of offer and the post-offer advertisement are true, fair and adequate in all material aspects and not misleading in any material particular, and are based on reliable sources, and state the source wherever necessary.
- (4) The acquirer and persons acting in concert with him shall not sell shares of the target company held by them, during the offer period.
- (5) The acquirer and persons acting in concert with him shall be jointly and severally responsible for fulfillment of applicable obligations under these regulations.

#### **Obligations of the target company [Regulation 26]**

- (1) Upon a public announcement of an open offer for acquiring shares of a target company being made, the board of directors of such target company shall ensure that during the offer period, the business of the target company is conducted in the ordinary course consistent with past practice.
- (2) During the offer period, unless the approval of shareholders of the target company by way of a special resolution by postal ballot is obtained, the board of directors of either the target company or any of its subsidiaries shall not,—
  - (a) alienate any material assets whether by way of sale, lease, encumbrance or otherwise or enter into any agreement therefor outside the ordinary course of business;
  - (b) effect any material borrowings outside the ordinary course of business;
  - (c) issue or allot any authorised but unissued securities entitling the holder to voting rights:

**Provided** that the target company or its subsidiaries may,—

- (i) issue or allot shares upon conversion of convertible securities issued prior to the public announcement of the open offer, in accordance with pre-determined terms of such conversion;
- (ii) issue or allot shares pursuant to any public issue in respect of which the red herring prospectus has been filed with the Registrar of Companies prior to the public announcement of the open offer; or

- (iii) issue or allot shares pursuant to any rights issue in respect of which the record date has been announced prior to the public announcement of the open offer;
  - (d) implement any buy-back of shares or effect any other change to the capital structure of the target company;
  - (e) enter into, amend or terminate any material contracts to which the target company or any of its subsidiaries is a party, outside the ordinary course of business, whether such contract is with a related party, within the meaning of the term under applicable accounting principles, or with any other person; and
  - (f) accelerate any contingent vesting of a right of any person to whom the target company or any of its subsidiaries may have an obligation, whether such obligation is to acquire shares of the target company by way of employee stock options or otherwise.
- (3) In any general meeting of a subsidiary of the target company in respect of the matters referred to in sub-regulation (2), the target company and its subsidiaries, if any, shall vote in a manner consistent with the special resolution passed by the shareholders of the target company.
  - (4) The target company shall be prohibited from fixing any record date for a corporate action on or after the third working day prior to the commencement of the tendering period and until the expiry of the tendering period.
  - (5) The target company shall furnish to the acquirer within two working days from the identified date, a list of shareholders as per the register of members of the target company containing names, addresses, shareholding and folio number, in electronic form, wherever available, and a list of persons whose applications, if any, for registration of transfer of shares are pending with the target company:

**Provided** that the acquirer shall reimburse reasonable costs payable by the target company to external agencies in order to furnish such information.

- (6) Upon receipt of the detailed public statement, the board of directors of the target company shall constitute a committee of independent directors to provide reasoned recommendations on such open offer, and the target company shall publish such recommendations:

**Provided** that such committee shall be entitled to seek external professional advice at the expense of the target company.

- (7) The committee of independent directors shall provide its written reasoned recommendations on the open offer to the shareholders of the target company and such recommendations shall be published in such form as may be specified, at least two working days before the commencement of the tendering period, in the same newspapers where the public announcement of the open offer was published, and simultaneously, a copy of the same shall be sent to,—
  - (i) the Board;
  - (ii) all the stock exchanges on which the shares of the target company are listed, and the stock exchanges shall forthwith disseminate such information to the public; and
  - (iii) to the manager to the open offer, and where there are competing offers, to the manager to the open offer for every competing offer.
- (8) The board of directors of the target company shall facilitate the acquirer in verification of shares tendered in acceptance of the open offer.
- (9) The board of directors of the target company shall make available to all acquirers making competing offers, any information and co-operation provided to any acquirer who has made a competing offer.



- (10) Upon fulfillment by the acquirer, of the conditions required under these regulations, the board of directors of the target company shall without any delay register the transfer of shares acquired by the acquirer in physical form, whether under the agreement or from open market purchases, or pursuant to the open offer.

#### **Obligations of the manager to the open offer [Regulation 27]**

- (1) Prior to public announcement being made, the manager to the open offer shall ensure that,—
- (a) the acquirer is able to implement the open offer; and
  - (b) firm arrangements for funds through verifiable means have been made by the acquirer to meet the payment obligations under the open offer.
- (2) The manager to the open offer shall ensure that the contents of the public announcement, the detailed public statement and the letter of offer and the post-offer advertisement are true, fair and adequate in all material aspects, not misleading in any material particular, are based on reliable sources, state the source wherever necessary, and are in compliance with the requirements under these regulations.
- (3) The manager to the open offer shall furnish to the Board a due diligence certificate along with the draft letter of offer filed under regulation 16.
- (4) The manager to the open offer shall ensure that market intermediaries engaged for the purposes of the open offer are registered with the Board.
- (5) The manager to the open offer shall exercise diligence, care and professional judgment to ensure compliance with these regulations.
- (6) The manager to the open offer shall not deal on his own account in the shares of the target company during the offer period.
- (7) The manager to the open offer shall file a report with the Board within fifteen working days from the expiry of the tendering period, in such form as may be specified, confirming status of completion of various open offer requirements.

#### **DISCLOSURES OF SHAREHOLDING AND CONTROL**

##### **Disclosure-related provisions [Regulation 28]**

- (1) The disclosures under this Chapter 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.
- (2) For the purposes of this Chapter, the acquisition and holding of any convertible security shall also be regarded as shares, and disclosures of such acquisitions and holdings shall be made accordingly.
- (3) For the purposes of this Chapter, the term “encumbrance” shall include a pledge, lien or any such transaction, by whatever name called.
- (4) Upon receipt of the disclosures required under this Chapter, the stock exchange shall forthwith disseminate the information so received.

##### **Disclosure of acquisition and disposal [Regulation 29]**

- (1) Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.

- (2) Any person, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation and such change exceeds two per cent of total shareholding or voting rights in the target company, in such form as may be specified.
- (3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,—
  - (a) every stock exchange where the shares of the target company are listed; and
  - (b) the target company at its registered office.
- (4) For the purposes of this regulation, shares taken by way of encumbrance shall be treated as an acquisition, shares given upon release of encumbrance shall be treated as a disposal, and disclosures shall be made by such person accordingly in such form as may be specified:

**Provided** that such requirement shall not apply to a scheduled commercial bank or public financial institution as pledgee in connection with a pledge of shares for securing indebtedness in the ordinary course of business.

#### **Continual disclosures [Regulation 30]**

- (1) Every person, who together with persons acting in concert with him, holds shares or voting rights entitling him to exercise twenty-five per cent or more of the voting rights in a target company, shall disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company in such form as may be specified.
- (2) The promoter of every target company shall together with persons acting in concert with him, disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company in such form as may be specified.
- (3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the end of each financial year to,—
  - (a) every stock exchange where the shares of the target company are listed; and
  - (b) the target company at its registered office.

#### **Disclosure of encumbered shares [Regulation 31]**

- (1) The promoter of every target company shall disclose details of shares in such target company encumbered by him or by persons acting in concert with him in such form as may be specified.
- (2) The promoter of every target company shall disclose details of any invocation of such encumbrance or release of such encumbrance of shares in such form as may be specified.
- (3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the creation or invocation or release of encumbrance, as the case may be to,—
  - (a) every stock exchange where the shares of the target company are listed; and
  - (b) the target company at its registered office.



## MISCELLANEOUS

### Power to issue directions [Regulation 32]

- (1) Without prejudice to its powers under Chapter VIA and section 24 of the Act, the Board may, in the interest of investors in securities and the securities market, issue such directions as it deems fit under section 11 or section 11B or section 11D of the Act, including,—
  - (a) directing divestment of shares acquired in violation of these regulations, whether through public auction or in the open market, or through an offer for sale under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, and directing the appointment of a merchant banker for such divestiture;
  - (b) directing transfer of the shares, or any proceeds of a directed sale of shares acquired in violation of these regulations to the Investor Protection and Education Fund established under the Securities and Exchange Board of India (Investor Protection and Education Fund) Regulations, 2009;
  - (c) directing the target company or any depository not to give effect to any transfer of shares acquired in violation of these regulations;
  - (d) directing the acquirer or any person acting in concert, or any nominee or proxy not to exercise any voting or other rights attached to shares acquired in violation of these regulations;
  - (e) debarring any person who has violated these regulations from accessing the capital market or dealing in securities for such period as may be directed, having regard to the nature and gravity of the violation;
  - (f) directing the acquirer to make an open offer for acquiring shares of the target company at such offer price as determined by the Board in accordance with these regulations;
  - (g) directing the acquirer not to cause, and the target company not to effect, any disposal of assets of the target company or any of its subsidiaries contrary to the contents of the letter of offer, where the conditions set out in the proviso to sub-regulation (2) of regulation 25 are not met;
  - (h) directing the acquirer who has failed to make an open offer or has delayed the making of an open offer, to make the open offer and to pay interest at such rate as considered appropriate by the Board along with the offer price;
  - (i) directing the acquirer who has failed to make payment of the open offer consideration to shareholders, not to make any open offer or enter into any transaction that would attract the obligation to make an open offer in respect of shares of any target company for such period as the Board may deem fit;
  - (j) directing the acquirer who has made an open offer but has delayed making payment of the open offer consideration to shareholders, to pay interest at such rate as considered appropriate by the Board for the delayed period;
  - (k) directing any person to cease and desist from exercising control acquired over any target company without complying with the requirements under these regulations;
  - (l) directing divestiture of such number of shares as would result in the shareholding of an acquirer and persons acting in concert with him being limited to the maximum permissible non-public shareholding or below.
- (2) In any proceedings initiated by the Board, the Board shall comply with principles of natural justice before issuing directions to any person.
- (3) The Board may, for failure to carry out the requirements of these regulations by any intermediary registered with the Board, initiate appropriate proceedings in accordance with applicable regulations.

**Power to remove difficulties [Regulation 33]**

In order to remove any difficulties in the interpretation or application of the provisions of these regulations, the Board shall have the power to issue directions through guidance notes or circulars:

**Provided** that where any direction is issued by the Board in a specific case relating to interpretation or application of any provision of these regulations, it shall be done only after affording a reasonable opportunity of being heard to the concerned persons and after recording reasons for the direction.

**Amendment to other regulations [Regulation 34]**

The regulations specified in the Schedule shall be amended in the manner and to the extent stated therein.

**Repeal and Savings [Regulation 35]**

- (1) The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, stand repealed from the date on which these regulations come into force.
- (2) Notwithstanding such repeal,—
  - (a) anything done or any action taken or purported to have been done or taken including comments on any letter of offer, exemption granted by the Board, fees collected, any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations, prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;
  - (b) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations has never been repealed;
  - (c) any open offer for which a public announcement has been made under the repealed regulations shall be required to be continued and completed under the repealed regulations.
- (3) After the repeal of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations.

# Study Note - 4

## THE COMPETITION ACT, 2002 AND ITS ROLE IN CORPORATE GOVERNANCE



### This Study Note includes

- 4.1 Preliminary
- 4.2 Prohibition of certain Agreements, Abuse of Dominant position and Regulation of Combination
- 4.3 Competition commission of India
- 4.4 Duties, Powers and Functions of Commission
- 4.5 Duties of Director General
- 4.6 Penalties
- 4.7 Competition Advocacy
- 4.8 Finance, Accounts and Audit
- 4.9 Competition Appellate Tribunal
- 4.10 Miscellaneous
- 4.11 MRTP Act vs. Competition Act
- 4.12 Competition Act, 2002 and Corporate Governance

### 4.1 PRELIMINARY

#### Short title, extent and commencement [Section 1]

- (1) This Act may be called The Competition Act, 2002.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date' as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

#### Definitions [Section 2]

In this Act, unless the context otherwise requires,-

- (a) "acquisition" means, directly or indirectly, acquiring or agreeing to acquire-
  - (i) Shares, voting rights or assets of any enterprise; or
  - (ii) control over management or control over assets of any enterprise;
- (b) "agreement" includes any arrangement or understanding or action in concert,-
  - (i) whether or not, such arrangement, understanding or action is formal or in writing; or
  - (ii) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings;
- (ba) "Appellate Tribunal" means the Competition Appellate Tribunal established under sub-section (1) of Section 53A;

- (c) "cartel" includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services;
- (d) "Chairperson" means the Chairperson of the Commission appointed under sub-section (1) of section 8;
- (e) "Commission" means the Competition Commission of India established under sub-section (1) of section 7;
- (f) "consumer" means any person who--
  - (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, whether such purchase of goods is for resale or for any commercial purpose or for personal use;
  - (ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person whether such hiring or availing of services is for any commercial purpose or for personal use;
- (g) "Director General" means the Director General appointed under sub-section (1) of section 16 and includes any Additional, Joint, Deputy or Assistant Directors General appointed under that section;
- (h) "enterprise" means a person or a department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or at different places, but does not include any activity of the Government relating to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space.

**Explanation.-** For the purposes of this clause,-

- (a) "activity" includes profession or occupation;
- (b) "article" includes a new article and "service" includes a new service; (c) "unit" or "division", in relation to an enterprise, includes-
  - (i) a plant or factory established for the production, storage, supply, distribution, acquisition or control of any article or goods;
  - (ii) any branch or office established for the provision of any service;
- (i) "goods" means goods as defined in the Sale of Goods Act, 1930 (3 of 1930) and includes-
  - (A) products manufactured, processed or mined;
  - (B) debentures, stocks and shares after allotment;



- (C) in relation to goods supplied, distributed or controlled in India, goods imported into India;
- (j) "Member" means a Member of the Commission appointed under sub-section (1) of section 8 and includes the Chairperson;
- (k) "notification" means a notification published in the Official Gazette; (1) "person" includes-
- (i) an individual;
  - (ii) a Hindu undivided family;
  - (iii) a company;
  - (iv) a firm;
  - (v) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;
  - (vi) any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);
  - (vii) any body corporate incorporated by or under the laws of a country outside India;
  - (viii) a cooperative society registered under any law relating to cooperative societies;
  - (ix) a local authority;
  - (x) every artificial juridical person, not falling within any of the preceding sub-clauses;
- (m) "practice" includes any practice relating to the carrying on of any trade by a person or an enterprise;
- (n) "prescribed" means prescribed by rules made under this Act;
- (o) "Price", in relation to the sale of any goods or to the performance of any services, includes every valuable consideration, whether direct or indirect, of deferred, and includes any consideration which in effect relates to any goods or to the performance of any services although ostensibly relating to any other matter or thing;
- (p) "public financial institution" means a public financial institution specified under section 4A of the Companies Act, 1956 (1 of 1956) and includes a State Financial, Industrial or Investment Corporation;
- (q) "regulations" means the regulations made by the Commission under section 64;
- (r) "relevant market" means the market which may be determined by the Commission with reference to the relevant product market of the relevant geographic market or with reference to both the markets;
- (s) "relevant geographic market" means a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas;
- (t) "relevant product market" means a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use;
- (u) "service" means service of any the description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial matters such as banking, communication, education, financing, insurance, chit funds, real estate, transport, storage material treatment, processing, supply of electrical or other energy, boarding, lodging, entertainment, amusement, construction, repair, conveying of news or information and advertising;

- (v) "shares" means shares in the share capital of a company carrying voting rights and includes-
  - (i) any security which entitles the holder to receive shares with voting rights;
  - (ii) stock except where a distinction between stock and share is expressed or implied;
- (w) "statutory authority" means any authority, board, corporation, council, institute, university or any other body corporate, established by or under anti. Central, State or Provincial. Act for the purposes of regulating production or supply of goods or provision of any services or markets therefor or any matter connected therewith or incidental thereto;
- (x) "trade" means any trade, business, industry, profession or occupation relating to the production, supply, distribution, storage or control of goods and includes the provision of any services;
- (y) "turnover" includes value of sale of goods or services;
- (z) words and expressions used but not defined in this Act and defined in the Companies Act, 1956 (1 of 1956) shall have the same meanings respectively assigned to them in that Act.

## 4.2 PROHIBITION OF CERTAIN AGREEMENTS, ABUSE OF DOMINANT POSITION AND REGULATION OF COMBINATIONS

### Anti-competitive agreements [Section 3]

- (1) No enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India.
- (2) Any agreement entered into in contravention of the provisions contained in sub-section (1) shall be void.
- (3) Any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which-
  - (a) directly or indirectly determines purchase or sale prices;
  - (b) limits or controls production, supply, markets, technical development, investment or provision of services;
  - (c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way;
  - (d) directly or indirectly results in bid rigging or collusive bidding,

shall be presumed to have an appreciable adverse effect on competition:

Provided that nothing contained in this sub-section shall apply to any agreement entered into by way of joint ventures if such agreement increases efficiency in Production supply, distribution, storage, acquisition or control of goods or provision of services.

Explanation.- For the purposes of this sub-section, "bid rigging" means any agreement, between enterprises or persons referred to in sub-section (3) engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding.

- (4) Any agreement amongst enterprises or persons at different stages or levels of the production



chain in different markets, in respect of production, supply, distribution, Storage, sale or price of, or trade in goods or provision of services, including-

- (a) tie-in arrangement;
- (b) exclusive supply agreement;
- (c) exclusive distribution agreement;
- (d) refusal to deal;
- (e) resale price maintenance,

shall be an agreement in contravention of sub-section (1) if such agreement causes or is likely to cause an appreciable adverse effect on competition in India.

Explanation.- For the purposes of this sub-section,-

- (a) "tie-in arrangement" includes any agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods;
- (b) "exclusive supply agreement" includes any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person;
- (c) "exclusive distribution agreement" includes any agreement to limit, restrict or withhold the output or supply of any goods or allocate any area or market for the disposal or sale of the goods;
- (d) "refusal to deal" includes any agreement which restricts, or is likely to restrict, or likely to restrict, by any method the persons or classes of persons to whom goods are sold or from whom goods are bought;
- (e) "resale price maintenance" includes any agreement to sell goods on condition that the prices to be charged on the resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged.

(5) Nothing contained in this section shall restrict-

- (i) the right of any person to restrain any infringement of, or to impose reasonable conditions, as may be necessary for protecting any of his rights which have been or may be conferred upon him under-
  - (a) the Copyright Act, 1957 (14 of 1957);
  - (b) the Patents Act, 1970 (39 of 1970);
  - (c) the Trade and Merchandise Marks Act, 1958 (43 of 1958) or the Trade Marks Act, 1999 (47 of 1999);
  - (d) the Geographical Indications of Goods (Registration and Protection) Act, 1999 (48 of 1999);
  - (e) the Designs Act, 2000 (16 of 2000);
  - (f) the Semiconductor Integrated Circuits Layout Design Act, 2000 (37 of 2000);
- (ii) the right of any person to export goods from India to the extent to which the agreement relates exclusively to the production, supply, distribution or control of goods or provision of services for such export.

#### **Abuse of dominant position [Section 4]**

- (1) No enterprise or group shall abuse its dominant position.
- (2) There shall be an abuse of dominant position [under sub-section (1), if an enterprise or a group].
  - (a) directly or indirectly, imposes unfair or discriminatory -
    - (i) Condition in purchase or sale of goods or service; or
    - (ii) Price in purchase or sale (including predatory price) of goods or service.

Explanation.- For the purposes of this clause, the unfair or discriminatory condition in purchase or sale of goods or service referred to in sub-clause (i) and unfair or discriminatory price in purchase or sale of goods (including predatory price) or service referred to in sub-clause (ii) shall not include such discriminatory condition or price which may be adopted to meet the competition; or

- (b) limits or restricts-
  - (i) Production of goods or provision of services or market therefor; or
  - (ii) technical or scientific development relating to goods or services to the prejudice of consumers; or
- (c) indulges in practice or practices resulting in denial of market access [in any manner]; or
- (d) makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or
- (e) uses its dominant position in one relevant market to enter into, or protect, other relevant market.

Explanation.- For the purposes of this section, the expression-

- (a) "dominant position" means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to-
  - (i) operate independently of competitive forces prevailing in the relevant market; or
  - (ii) affect its competitors or consumers or the relevant market in its favour.
- (b) "predatory price" means the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations, of production of the goods or provision of services, with a view to reduce competition or eliminate the competitors.
- (c) "group" shall have the same meaning as assigned to it in clause (b) of the Explanation to section 5.

#### **Combination [Section 5]**

The acquisition of one or more enterprises by one or more persons or merger or amalgamation of enterprises shall be a combination of such enterprises and persons or enterprises, if-

- (a) any acquisition where-
  - (i) the parties to the acquisition, being the acquirer and the enterprise, whose control, shares, voting rights or assets have been acquired or are being acquired jointly have,-
    - (A) either, in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or
    - (B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars, including at least rupees five hundred crores in India, or

- turnover more than fifteen hundred million US dollars, including at least rupees fifteen hundred crores in India; or
- (ii) the group, to which the enterprise whose control, shares, assets or voting rights have been acquired or are being acquired, would belong after the acquisition, jointly have or would jointly have,-
    - (A) either in India, the assets of the value of more than rupees four thousand crores or turnover more than rupees twelve thousand crores; or
    - (B) in India or outside India, in aggregate, the assets of the value of more than two billion US dollars, including at least rupees five hundred crores in India, or turnover more than six billion US dollars, including at least rupees fifteen hundred crores in India; or]
  - (b) acquiring of control by a person over an enterprise when such person has already direct or indirect control over another enterprise engaged in production, distribution or trading of a similar or identical or substitutable goods or provision of a similar or identical or substitutable service, if-
    - (i) the enterprise over which control has been acquired along with the enterprise over which the acquirer already has direct or indirect control jointly have,-
      - (A) either in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or
      - (B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars, including at least rupees five hundred crores in India, or turnover more than fifteen hundred million US dollars, including at least rupees fifteen hundred crores in India; or]
    - (ii) the group, to which enterprise whose control has been acquired, or is being acquired, would belong after the acquisition, jointly have or would jointly have,-
      - (A) either in India, the assets of the value of more than rupees four thousand crores or turnover more than rupees twelve thousand crores; or
      - (B) in India or outside India, in aggregate, the assets of the value of more than two billion US dollars, including at least rupees five hundred crores in India, or turnover more than six billion US dollars, including at least rupees fifteen hundred crores in India; or
  - (c) any merger or amalgamation in which-
    - (i) the enterprise remaining after merger or the enterprise created as a result of the amalgamation, as the case may be, have,-
      - (A) either in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or
      - (B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars, including at least rupees five hundred crores in India, or turnover more than fifteen hundred million US dollars, including at least rupees fifteen hundred crores in India; or
    - (ii) the group, to which the enterprise remaining after the merger or the enterprise created as a result of the amalgamation, would belong after the merger or the amalgamation, as the case may be, have or would have,-
      - (A) either in India, the assets of the value of more than rupees four thousand crores or turnover more than rupees twelve thousand crores; or
      - (B) in India or outside India, in aggregate, the assets of the value of more than two billion US dollars, including at least rupees five hundred crores in India, or turnover more than six billion US dollars, including at least rupees fifteen hundred crores in India;

Explanation. – For the purposes of this section,-

- (a) “control” includes controlling the affairs or management by –
  - (i) one or more enterprises, either jointly or singly, over another enterprise or group;
  - (ii) one or more groups, either jointly or singly, over another group or enterprise;
- (b) “group” means two or more enterprises which, directly or indirectly, are in a position to-
  - (i) exercise twenty-six per cent. or more of the voting rights in the other enterprise; or
  - (ii) appoint more than fifty per cent. of the members of the board of directors in the other enterprise; or
  - (iii) control the management or affairs of the other enterprise;
- (c) the value of assets shall be determined by taking the book value of the assets as shown, in the audited books of account of the enterprise, in the financial year immediately preceding the financial year in which the date of proposed merger falls, as reduced by any depreciation, and the value of assets shall include the brand value, value of goodwill, or value of copyright, patent, permitted use, collective mark, registered proprietor, registered trade mark, registered user, homonymous geographical indication, geographical indications, design or layout design or similar other commercial rights, if any, referred to in sub-section (5) of section 3.

#### **Regulation of combinations [Section 6]**

- (1) No person or enterprise shall enter into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and such a combination shall be void.
- (2) Subject to the provisions contained in sub-section (1), any person or enterprise, who or which proposes to enter into a combination, [shall] give notice to the Commission, in the form as may be specified, and the fee which may be determined, by regulations, disclosing the details of the proposed combination, within [thirty days] of-
  - (a) approval of the proposal relating to merger or amalgamation, referred to in clause (c) of section 5, by the board of directors of the enterprises concerned with such merger or amalgamation, as the case may be;
  - (b) execution of any agreement or other document for acquisition referred to in clause (a) of section 5 or acquiring of control referred to in clause (b) of that section.
- (2A) No combination shall come into effect until two hundred and ten days have passed from the day on which the notice has been given to the Commission under sub-section (2) or the Commission has passed orders under section 31, whichever is earlier.
- (3) The Commission shall, after receipt of notice under sub-section (2), deal with such notice in accordance with the provisions contained in sections 29, 30 and 31.
- (4) The provisions of this section shall not apply to share subscription or financing facility or any acquisition, by a public financial institution, foreign institutional investor, bank or venture capital fund, pursuant to any covenant of a loan agreement or investment agreement.
- (5) The public financial institution, foreign institutional investor, bank or venture capital fund, referred to in sub-section (4), shall, within seven days from the date of the acquisition, file, in the form as may be specified by regulations, with the Commission the details of the acquisition including the details of control, the circumstances for exercise of such control and the consequences of default arising out of such loan agreement or investment agreement, as the case may be.

Explanation.-For the purposes of this section, the expression-

- (a) "foreign institutional investor" has the same meaning as assigned to it in clause (a) of the Explanation to section 115AD of the Income-tax Act, 1961 (43 of 1961);
- (b) "Venture capital fund" has the same meaning as assigned to it in clause (b) of the Explanation to clause (23 FB) of section 10 of the Income-tax Act, 1961 (43 of 1961);.

### 4.3 COMPETITION COMMISSION OF INDIA

#### Establishment of Commission [Section 7]

- (1) With effect from such date as the Central Government may, by notification, appoint, there shall be established, for the purposes of this Act, a Commission to be called the "Competition Commission of India".
- (2) The Commission shall be a body corporate by the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.
- (3) The head office of the Commission shall be at such place as the Central Government may decide from time to time.
- (4) The Commission may establish offices at other places in India.

#### Composition of Commission [Section 8]

- (1) The Commission shall consist of a Chairperson and not less than two and not more than six other Members to be appointed by the Central Government.
- (2) The Chairperson and every other Member shall be a person of ability, integrity and standing and who has special knowledge of, and such professional experience of not less than fifteen years in, international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs or competition matters, including competition law and policy, which in the opinion of the Central Government, may be useful to the Commission.
- (3) The Chairperson and other Members shall be whole time Members.

#### Selection Committee for Chairperson and Members of Commission [Section 9]

- (1) The Chairperson and other Members of the Commission shall be appointed by the Central Government from a panel of names recommended by a Selection Committee consisting of-
  - (a) the Chief Justice of India or his nominee - Chairperson;
  - (b) the Secretary in the Ministry of Corporate Affairs - Member;
  - (c) the Secretary in the Ministry of Law and Justice - Member;
  - (d) two experts of repute who have special - Member.Knowledge of, and professional experience in  
International trade, economics, business,  
commerce, law, finance, accountancy,  
management, industry, public affairs or  
competition matters including competition law  
and policy

- (2) The term of the Selection Committee and the manner of selection of panel of names shall be such as may be prescribed.

**Term of office of Chairperson and other Members [Section 10]**

- (1) The Chairperson and every other Member shall hold office as such for a term of five years from the date on which he enters upon his office and shall be eligible for reappointment:  
[Provided that the Chairperson or other Members shall not hold office as such after he has attained the age of sixty-five years.]
- (2) A vacancy caused by the resignation or removal of the Chairperson or any other Member under section 11 or by death or otherwise shall be filled by fresh appointment in accordance with the provisions of sections 8 and 9.
- (3) The Chairperson and every other Member shall, before entering upon his office, make and subscribe to an oath of office and of secrecy in such form, manner and before such authority, as may be prescribed.
- (4) In the event of the occurrence of a vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the senior-most Member shall act as the Chairperson, until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.
- (5) When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member shall discharge the functions of the Chairperson until the date on which the Chairperson resumes the charge of his functions.

**Resignation, removal and suspension of Chairperson and other members [Section 11]**

- (1) The Chairperson or any other Member may, by notice in writing under his hand addressed to the Central Government, resign his office:  
  
Provided that the Chairperson or a Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.
- (2) Notwithstanding anything contained in sub-section (1), the Central Government may, by order, remove the Chairperson or any other Member from his office if such Chairperson or Member, as the case may be,-
  - (a) is, or at any time has been, adjudged as an insolvent; or
  - (b) has engaged at any time, during his term of office, in any paid employment; or
  - (c) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
  - (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member; or
  - (e) has so abused his position as to render his continuance in office prejudicial to the public interest; or
  - (f) has become physically or mentally incapable of acting as a Member.
- (3) Notwithstanding anything contained in [sub-section (2)], no Member shall be removed from his office on the ground specified in clause (d) or clause (e) of that sub-section unless the Supreme Court, on a reference being made to it in this behalf by the Central Government, has, on an inquiry, held by it in accordance with such procedure as may be prescribed in this behalf by the Supreme Court, reported that the Member, ought on such ground or grounds to be removed.



### **Restriction on employment of Chairperson and other Members in certain cases [Section 12]**

The Chairperson and other Members shall not, for a period of 8[two years] from the date on which they cease to hold office, accept any employment in, or connected with the management or administration of, any enterprise which has been a party to a proceeding before the Commission under this Act:

Provided that nothing contained in this section shall apply to any employment under the Central Government or a State Government or local authority or in any statutory authority or any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956).

### **Administrative powers of Chairperson [Section 13]**

The Chairperson shall have the powers of general superintendence, direction and control in respect of all administrative matters of the Commission:

Provided that the Chairperson may delegate such of his powers relating to administrative matters of the Commission, as he may think fit, to any other Member or officer of the Commission.

### **Salary and allowances and other terms and conditions of service of Chairperson and other Members [Section 14]**

- (1) The salary, and the other terms and conditions of service, of the Chairperson and other Members, including travelling expenses, house rent allowance and conveyance facilities, sumptuary allowance and medical facilities shall be such as may be prescribed.
- (2) The salary, allowances and other terms and conditions of service of the Chairperson or a Member shall not be varied to his disadvantage after appointment.

### **Vacancy, etc. not to invalidate proceedings of Commission [Section 15]**

No act or proceeding of the Commission shall be invalid merely by reason of -

- (a) any vacancy in, or any defect in the constitution of, the Commission; or
- (b) any defect in the appointment of a person acting as a Chairperson or as a Member; or
- (c) any irregularity in the procedure of the Commission not affecting the merits of the case.

### **Appointment of Director General, etc [Section 16]**

- (1) The Central Government may, by notification, appoint a Director General for the purposes of assisting the Commission in conducting inquiry into contravention of any of the provisions of this Act and for performing such other functions as are, or may be, provided by or under this Act.
- (1A) The number of other Additional, Joint, Deputy or Assistant Directors General or such officers or other employees in the office of Director General and the manner of appointment of such Additional, Joint, Deputy or Assistant Directors General or such officers or other employees shall be such as may be prescribed.
- (2) Every Additional, Joint, Deputy and Assistant Directors General or "[such officers or other employees,] shall exercise his powers, and discharge his functions, subject to the general control, supervision and direction of the Director General.
- (3) The salary, allowances and other terms and conditions of serv Director General and Additional, Joint, Deputy and Assistant Directors General or, "[such officers or other employees,] shall be such as may be prescribed.
- (4) The Director General and Additional, Joint, Deputy and Assistant Directors General or [such officers or other employees,] shall be appointed from amongst persons of integrity and outstanding ability and who have experience in investigation, and knowledge of accountancy, management, business, public administration, international trade, law or economics and such other qualifications as may be prescribed.

### **Appointment of Secretary, experts, professionals and officers and other employees of Commission [Section 17]**

- (1) The Commission may appoint a Secretary and such officers and other employees as it considers necessary for the efficient performance of its functions under this Act.
- (2) The salaries and allowances payable to, and other terms and conditions of service of, the Secretary and officers and other employees of the Commission and the number of such officers and other employees shall be such as may be prescribed.
- (3) The Commission may engage, in accordance with the procedure specified by regulations, such number of experts and professionals of integrity and outstanding ability, who have special knowledge of, and experience in, economics, law, business or such other disciplines related to competition, as it deems necessary to assist the Commission in the discharge of its functions under this Act.]

## **4.4 DUTIES, POWERS AND FUNCTIONS OF COMMISSION**

### **Duties of Commission [Section 18]**

Subject to the provisions of this Act, it shall be the duty of the Commission to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade carried on by other participants, in markets in India:

Provided that the Commission may, for the purpose of discharging its duties or performing its functions under this Act, enter into any memorandum or arrangement with the prior approval of the Central Government, with any agency of any foreign country.

### **Inquiry into certain agreements and dominant position of enterprise [Section 19]**

- (1) The Commission may inquire into any alleged contravention of the provisions contained in sub-section (1) of section 3 or sub-section (1) of section 4 either on its own motion or on-
  - (a) [receipt of any information, in such manner and] accompanied by such fee as may be determined by regulation, from any person, consumer or their association or trade association; or
  - (b) a reference made to it by the Central Government or a State Government or a statutory authority.
- (2) Without prejudice to the provisions contained in sub-section (1), the powers and functions of the Commission shall include the powers and functions specified in sub-sections (3) to (7).
- (3) The Commission shall, while determining whether an agreement has an appreciable adverse effect on competition under section 3, have due regard to all or any of the following factors, namely:-
  - (a) creation of barriers to new entrants in the market;
  - (b) driving existing competitors out of the market;
  - (c) foreclosure of competition by hindering entry into the market;
  - (d) accrual of benefits to consumers;
  - (e) improvements in production or distribution of goods or provision of services;
  - (f) promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.

- (4) The Commission shall, while inquiring whether an enterprise enjoys a dominant position or not under section 4, have due regard to all or any of the following factors, namely:-
- (a) market share of the enterprise;
  - (b) size and resources of the enterprise;
  - (c) size and importance of the competitors;
  - (d) economic power of the enterprise including commercial advantages over competitors;
  - (e) vertical integration of the enterprises or sale or service network of such enterprises;
  - (f) dependence of consumers on the enterprise;
  - (g) monopoly or dominant position whether acquired as a result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise;
  - (h) entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or service for consumers;
  - (i) countervailing buying power;
  - (j) market structure and size of market;
  - (k) social obligations and social costs;
  - (l) relative advantage, by way of the contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have an appreciable adverse effect on competition;
  - (m) any other factor which the Commission inquiry
- (5) For determining whether a market constitutes a "relevant market" for the purposes of this Act, the Commission shall have due regard to the "relevant geographic market" and "relevant product market".
- (6) The Commission shall, while determining the "relevant geographic market", have due regard to all or any of the following factors, namely:-
- (a) regulatory trade barriers;
  - (b) local specification requirements;
  - (c) national procurement policies;
  - (d) adequate distribution facilities;
  - (e) transport costs;
  - (f) language;
  - (g) consumer preferences;
  - (h) need for secure or regular supplies or rapid after-sales services.
- (7) The Commission shall, while determining the "relevant product market", have due regard to all or any of the following factors, namely:-
- (a) physical characteristics or end-use of goods;
  - (b) price of goods or service;
  - (c) consumer preferences;

- (d) exclusion of inhouse production;
- (e) existence of specialised producers;
- (f) classification of industrial products.

**Inquiry into combination by Commission [Section 20]**

- (1) The Commission may, upon its own knowledge or information relating to acquisition referred to in clause (a) of section 5 or acquiring of control referred to in clause (b) of section 5 or merger or amalgamation referred to in clause (c) of that section, inquire into whether such a combination has caused or is likely to cause an appreciable adverse effect on competition in India:

Provided that the Commission shall not initiate any inquiry under this sub-section after the expiry of one year from the date on which such combination has taken effect.

- (2) The Commission shall, on receipt of a notice under sub-section (2) of section 6 [\* \* \*], inquire whether a combination referred to in that notice or reference has caused or is likely to cause an appreciable adverse effect on competition in India.
- (3) Notwithstanding anything contained in section 5, the Central Government shall, on the expiry of a period of two years from the date of commencement of this Act and thereafter every two years, in consultation with the Commission, by notification, enhance or reduce, on the basis of the wholesale price index or fluctuations in exchange rate of rupee or foreign currencies, the value of assets or the value of turnover, for the purposes of that section.
- (4) For the purposes of determining whether a combination would have the effect of or is likely to have an appreciable adverse effect on competition in the relevant market, the Commission shall have due regard to all or any of the following factors, namely:-
- (a) actual and potential level of competition through imports in the market;
  - (b) extent of barriers to entry into the market;
  - (c) level of combination in the market; .o
  - (d) degree of countervailing power in the market;
  - (e) likelihood that the combination would result in the parties to the combination being able to significantly and sustainably increase prices or profit margins;
  - (f) extent of effective competition likely to sustain in a market;
  - (g) extent to which substitutes are available or are likely to be available in the market;
  - (h) market share, in the relevant market, of the persons or enterprise in a combination, individually and as a combination;
  - (i) likelihood that the combination would result in the removal of a vigorous and effective competitor or competitors in the market;
  - (j) nature and extent of vertical integration in the market;
  - (k) possibility of a failing business;
  - (l) nature and extent of innovation;
  - (m) relative advantage, by way of the contribution to the economic development, by any combination having or likely to have appreciable adverse effect on competition;
  - (n) whether the benefits of the combination outweigh the adverse impact of the combination, if any.

### **Reference by statutory authority [Section 21]**

- (1) Where in the course of a proceeding before any statutory authority an issue is raised by any party that any decision which such statutory authority has taken or proposes to take is or would be, contrary to any of the provisions of this Act, then such statutory authority may make a reference in respect of such issue to the Commission:

Provided that any statutory authority, may, suo motu, make such a reference to the Commission.

- (2) On receipt of a reference under sub-section (1), the Commission shall give its opinion, within sixty days of receipt of such reference, to such statutory authority which shall consider the opinion of the Commission and thereafter, give its findings recording reasons therefore on the issues referred to in the said opinion.

### **Reference by Commission [Section 21A]**

- (1) Where in the course of a proceeding before the Commission an issue is raised by any party that any decision which, the Commission has taken during such proceeding or proposes to take, is or would be contrary to any provision of this Act whose implementation is entrusted to a statutory authority, then the Commission may make a reference in respect of such issue to the statutory authority:

Provided that the Commission, may, suo motu, make such a reference to the statutory authority.

- (2) On receipt of a reference under sub-section (1), the statutory authority shall give its opinion, within sixty days of receipt of such reference, to the Commission which shall consider the opinion of the statutory authority, and thereafter give its findings recording reasons therefore on the issues referred to in the said opinion.

### **Meetings of Commission [Section 22]**

- (1) The Commission shall meet at such times and places, and shall observe such rules and procedure in regard to the transaction of business at its meetings as may be provided by regulations.
- (2) The Chairperson, if for any reason, is unable to attend a meeting of the Commission, the senior-most Member present at the meeting, shall preside at the meeting.
- (3) All questions which come up before any meeting of the Commission shall be decided by a majority of the Members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the Member presiding, shall have a second or/casting vote:

Provided that the quorum for such meeting shall be three Members.

### **SECTION 23. [\*\*\*]**

### **SECTION 24. [\*\*\*]**

### **SECTION 25. [\*\*\*]**

### **Procedure for inquiry under section 19 [Section 26]**

- (1) On receipt of a reference from the Central Government or a State Government or a statutory authority or on its own knowledge or information received under section 19, if the Commission is of the opinion that there exists a prima facie case, it shall direct the Director General to cause an investigation to be made into the matter:

Provided that if the subject matter of an information received is, in the opinion of the Commission, substantially the same as or has been covered by any previous information received, then the new information may be clubbed with the previous information.

- (2) Where on receipt of a reference from the Central Government or a State Government or a statutory authority or information received under section 19, the Commission is of the opinion

that there exists no prima facie case, it shall close the matter forthwith and pass such orders as it deems fit and send a copy of its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.

- (3) The Director General shall, on receipt of direction under sub-section (1), submit a report on his findings within such period as may be specified by the Commission.
- (4) The Commission may forward a copy of the report referred to in sub section (3) to the parties concerned:

Provided that in case the investigation is caused to be made based on reference received from the Central Government or the State Government or the statutory authority, the Commission shall forward a copy of the report referred to in sub-section (3) to the Central Government or the State Government or the statutory authority, as the case may be.

- (5) If the report of the Director General referred to in sub-section (3) recommends that there is no contravention of the provisions of this Act, the Commission shall invite objections or suggestions from the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be, on such report of the Director General.
- (6) If, after consideration of the objections and suggestions referred to in sub section (5), if any, the Commission agrees with the recommendation of the Director General, it shall close the matter forthwith and pass such orders as it deems fit and communicate its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.
- (7) If, after consideration of the objections or suggestions referred to in sub section (5), if any, the Commission is of the opinion that further investigations is called for, it may direct further investigation in the matter by the Director General or cause further inquiry to be made by in the matter or itself proceed with further inquiry in the matter in accordance with the provisions of this Act.
- (8) If the report of the Director General referred to in sub-section (3) recommends that there is contravention of any of the provisions of this Act, and the Commission is of the opinion that further inquiry is called for, it shall inquire into such contravention in accordance with the provisions of this Act.

#### **Orders by Commission after inquiry into agreements or abuse of dominant Position [Section 27]**

Where after inquiry the Commission finds that any agreement referred to in section 3 or action of an enterprise in a dominant position, is in contravention of section 3 or section 4, as the case may be, it may pass all or any of the following orders, namely:-

- (a) direct any enterprise or association of enterprises or person or association of persons, as the case may be, involved in such agreement, or abuse of dominant position, to discontinue and not to reenter such agreement or discontinue such abuse of dominant position, as the case may be;
- (b) impose such penalty, as it may deem fit which shall be not more than ten per cent. of the average of the turnover for the last three preceding financial years, upon each of such person or enterprises which are parties to such agreements or abuse:

Provided that in case any agreement referred to in section 3 has been entered into by a cartel, the Commission may impose upon each producer, seller, distributor, trader or service provider included in that cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or ten per cent. of its turnover for each year of the continuance of such agreement, whichever is higher.



- (c) [\* \* \*]
- (d) direct that the agreements shall stand modified to the extent and in the manner as may be specified in the order by the Commission;
- (e) direct the enterprises concerned to abide by such other/orders as the Commission may pass and comply with the directions, including payment of costs, if any;
- (f) [\*\*\*]
- (g) pass such other [order or issue such directions] as it may deem fit.

[Provided that while passing orders under this section, if the Commission comes to a finding, that an enterprise in contravention to section 3 or section 4 of the Act is a member of a group as defined in clause(b) of the Explanation to section 5 of the Act, and other members of such a group are also responsible for, or have contributed to, such a contravention, then it may pass orders, under this section, against such members of the group.]

#### **Division of enterprise enjoying dominant position [Section 28]**

- (1) The [Commission] may, notwithstanding anything contained in any other law for the time being in force, by order in writing, direct division of an enterprise enjoying dominant position to ensure that such enterprise does not abuse its dominant position.
- (2) In particular, and without prejudice to the generality of the foregoing powers, the order referred to in sub-section (1) may provide for all or any of the following matters, namely:-
  - (a) the transfer or vesting of property, rights, liabilities or obligations;
  - (b) the adjustment of contracts either by discharge or reduction of any liability or obligation or otherwise;
  - (c) the creation, allotment, surrender or cancellation of any shares, stocks or securities;
  - (d) [\* \* \*]
  - (e) the formation or winding up of an enterprise or the amendment of the memorandum of association or articles of association or any other instruments regulating the business of any enterprise;
  - (f) the extent to which, and the circumstances in which, provisions of the order affecting an enterprise may be altered by the enterprise and the registration thereof;
  - (g) any other matter which may be necessary to give effect to the division of the. enterprise.
- (3) Notwithstanding anything contained in any other law for the time being in force or in any contract or in any memorandum or articles of association, an officer of a company who ceases to hold office as such in consequence of the division of an enterprise shall not be entitled to claim any compensation for such cesser.

#### **Procedure for investigation of combination [Section 29]**

- (1) Where the Commission is of the [prima facie] opinion that a combination is likely to cause, or has caused an appreciable adverse effect on competition within the relevant market in India, it shall issue a notice to show cause to the parties to combination calling upon them to respond within thirty days of the receipt of the notice, as to why investigation in respect of such combination should not be conducted.
- 1(A) After receipt of the response of the parties to the combination under sub-section (1), the Commission may call for a report from the Director General and such report shall be submitted by the Director General within such time as the Commission may direct.

- (2) The Commission, if it is prima facie of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition, it shall, within seven working days from the date of receipt of the response of the parties to the combination, `[or the receipt of the report from Director General called under sub section (1A), whichever is later] direct the parties to the said combination to publish details of the combination within ten working days of such direction, in such manner, as it thinks appropriate, for bringing the combination to the knowledge or information of the public and persons affected or likely to be affected by such combination.
- (3) The Commission may invite any person or member of the public, affected or likely to be affected by the said combination, to file his written objections, if any, before the Commission within fifteen working days from the date on which the details of the combination were published under sub-section (2).
- (4) The Commission may, within fifteen working days from the expiry of the period specified in sub-section (3), call for such additional or other information as it may deem fit from the parties to the said combination.
- (5) The additional or other information called for by the Commission shall be furnished by the parties referred to in sub-section (4) within fifteen days from the expiry of the period specified in sub-section (4).
- (6) After receipt of all information and within a period of fortyfive working days from the expiry of the period specified in sub-section (5), the Commission shall proceed to deal with the case in accordance with the provisions contained in section 31.

#### **Procedure in case of notice under sub-section (2) of section 6 [Section 30]**

Where any person or enterprises has given a notice under sub-section (2) of section 6, the Commission shall examine such notice and form its prima facie opinion as provided in sub-section (1) of section 29 and proceed as per provisions contained in that section.

#### **Orders of Commission on certain combinations [Section 31]**

- (1) Where the Commission is of the opinion that any combination does not, or is not likely to, have an appreciable adverse effect on competition, it shall, by order, approve that combination including the combination in respect of which a notice has been given under sub-section (2) of section 6.
- (2) Where the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition, it shall direct that the combination shall not take effect.
- (3) Where the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition but such adverse effect can be eliminated by suitable modification to such combination, it may propose appropriate modification to the combination, co the parties to such combination.
- (4) The parties, who accept the modification proposed by the Commission under sub-section (3), shall carry out such modification within the period specified by the Commission.
- (5) If the parties to the combination, who have accepted the modification under sub-section (4), fail to carry out the modification within the period specified by the Commission, such combination shall be deemed to have an appreciable adverse effect on competition and the Commission shall deal with such combination in accordance with the provisions of this Act.
- (6) If the parties to the combination do not accept the modification proposed by the Commission under sub-section (3), such parties may, within thirty working days of the modification proposed by the Commission, submit amendment to the modification proposed by the Commission under that sub-section.

- (7) If the Commission agrees with the amendment submitted by the parties under sub-section (6), it shall, by order, approve the combination.
- (8) If the Commission does not accept the amendment submitted under sub-section (6), then, the parties shall be allowed a further period of thirty working days within which such parties shall accept the modification proposed by the Commission under sub-section (3).
- (9) If the parties fail to accept the modification proposed by the Commission within thirty working days referred to in sub-section (6) or within a further period of thirty working days referred to in sub-section (8), the combination shall be deemed to have an appreciable adverse effect on competition and be dealt with in accordance with the provisions of this Act.
- (10) Where the Commission has directed under sub-section (2) that the combination shall not take effect or the combination is deemed to have an appreciable adverse effect on competition under sub-section (9), then, without prejudice to any penalty which may be imposed or any prosecution which may be initiated under this Act, the Commission may order that-
  - (a) the acquisition referred to in clause (a) of section 5; or
  - (b) the acquiring of control referred to in clause (b) of section 5; or
  - (c) the merger or amalgamation referred to in clause (c) of section 5, shall not be given effect to:Provided that the Commission may, if it considers appropriate, frame a scheme to implement its order under this sub-section.
- (11) If the Commission does not, on the expiry of a period of [ two hundred and ten days from the date of notice given to the Commission under sub-section (2) of section 6], pass an order or issue direction in accordance with the provisions of sub-section (1) or sub-section (2) or sub-section (7), the combination shall be deemed to have been approved by the Commission.

Explanation.-For the purposes of determining the period of [two hundred and ten] days specified in this sub-section, the period of thirty working days specified in sub-section (6) and a further period of thirty working days specified in sub-section (8) shall be excluded.
- (12) Where any extension of time is sought by the parties to the combination, the period of ninety working days shall be reckoned after deducting the extended time granted at the request of the parties.
- (13) Where the Commission has ordered a combination to be void, the acquisition or acquiring of control or merger or amalgamation referred to in section 5, shall be dealt with by the authorities under any other law for the time being in force as if such acquisition or acquiring of control or merger or amalgamation had not taken place and the parties to the combination shall be dealt with accordingly.
- (14) Nothing contained in this Chapter shall affect any proceeding initiated or which may be initiated under any other law for the time being in force.

### **Acts taking place outside India but having an effect on competition in India [Section 32]**

The Commission shall, notwithstanding that,-

- (a) an agreement referred to in section 3 has been entered into outside India; or
- (b) any party to such agreement is outside India; or
- (c) any enterprise abusing the dominant position is outside India; or
- (d) a combination has taken place outside India; or
- (e) any party to combination is outside India; or

- (f) any other matter or practice or action arising out of such agreement or dominant position or combination is outside India,

have power to inquire [in accordance with the provisions contained in sections 19, 20, 26, 29 and 30 of the Act] into such agreement or abuse of dominant position or combination if such agreement or dominant position or combination has, or is likely to have, an appreciable adverse effect on competition in the relevant market in India [and pass such orders as it may deem fit in accordance with the provisions of this Act.]

#### **Power to issue interim orders [Section 33]**

Where during an inquiry, the Commission is satisfied that an act in contravention of sub-section (1) of section 3 or sub-section (1) of section 4 or section 6 has been committed and continues to be committed or that such act is about to be committed, the Commission may, by order, temporarily restrain any party from carrying on such act until the conclusion of such inquiry or until further orders, without giving notice to such party, where it deems it necessary.

#### **Omitted by competition (Amendment) Act, 2007 [Section 34]**

#### **Appearance before Commission [Section 35]**

A person or an enterprise or the Director General may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of his or its officers to present his or its case before the Commission.

**Explanation.-** For the purposes of this section,—

- (a) “chartered accountant” means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
- (b) “company secretary” means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 (56 of 1980) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
- (c) “cost accountant” means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 (23 of 1959) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
- (d) “legal practitioner” means an advocate, vakil or an attorney of any High Court, and includes a pleader in practice.

#### **Power of Commission to regulate its own procedure [Section 36]**

- (1) In the discharge of its functions, the Commission shall be guided by the principals of natural justice and, subject to the other provisions of this Act and of any rules made by the Central Government, the Commission shall have the powers to regulate its own procedure.
- (2) The Commission shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:—
  - (a) summoning and enforcing the attendance of any person and examining him on oath;
  - (b) requiring the discovery and production of documents;
  - (c) receiving evidence on affidavits;
  - (d) issuing commissions for the examination of witnesses or documents;
  - (e) requisitioning, subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), any public record or document or copy of such record or document from any office;

- (3) The Commission may call upon such experts, from the fields of economics, commerce, accountancy, international trade or from any other discipline as it deems necessary to assist the Commission in the conduct of any inquiry by it.
- (4) The Commission may direct any person—
  - (a) to produce before the Director General or the Secretary or an officer authorised by it, such books, or other documents in the custody or under the control of such person so directed as may be specified or described in the direction, being documents relating to any trade, the examination of which may be required for the purposes of this Act;
  - (b) to furnish to the Director General or the Secretary or any officer authorised by it, as respects the trade or such other information as may be in his possession in relation to the trade carried on by such person, as may be required for the purposes of this Act.

**Omitted by competition (Amendment) Act, 2007 [Section 37]**

**Rectification of orders [Section 38]**

- (1) With a view to rectifying any mistake apparent from the record, the Commission may amend any order passed by it under the provisions of this Act.
- (2) Subject to the other provisions of this Act, the Commission may make—
  - (a) an amendment under sub-section (1) of its own motion;
  - (b) an amendment for rectifying any such mistake which has been brought to its notice by any party to the order.

Explanation : For the removal of doubts, it is hereby declared that the Commission shall not, while rectifying any mistake apparent from record, amend substantive part of its order passed under the provisions of this Act.

**Execution of orders of Commission imposing monetary penalty [Section 39]**

- (1) If a person fails to pay any monetary penalty imposed on him under this Act, the Commission shall proceed to recover such penalty, in such manner as may be specified by the regulations.
- (2) In a case where the Commission is of the opinion that it would be expedient to recover the penalty imposed under this Act in accordance with the provisions of the Income-tax Act, 1961 (43 Of 1961), it may make a reference to this effect to the concerned income tax authority under that Act for recovery of the penalty as tax due under the said Act.
- (3) Where a reference has been made by the Commission under sub-section (2) for recovery of penalty, the person upon whom the penalty has been imposed shall be deemed to be the assessee in default under the Income Tax Act, 1961 (43 Of 1961), and the provisions contained in sections 221 to 227, 228A, 229, 231 and 232 of the said Act and the Second Schedule to that Act and any rules made thereunder shall, in so far as may be, apply as if the said provisions were the provisions of this Act and referred to sums by way of penalty imposed under this Act instead of to income-tax and sums imposed by way of penalty, fine and interest under the Income Tax Act 1961 (43 Of 1961) and to the Commission instead of the Assessing Officer.

Explanation 1 : Any reference to sub-section (2) or sub-section (6) of section 220 of the income tax Act, 1961 (43 Of 1961), in the said provisions of that Act or the rules made thereunder shall be construed as references to sections 43 to 45 of this Act.

Explanation 2: The Tax Recovery Commissioner and the Tax Recovery Officer referred to in the Income-tax Act, 1961 (43 Of 1961) shall be deemed to be the Tax Recovery Commissioner and the Tax Recovery Officer for the purposes of recovery of sums imposed by way of penalty under this Act and reference made by the Commission under sub-section (2) would amount to drawing of

a certificate by the Tax Recovery Officer as far as demand relating to penalty under this Act.

Explanation 3 : Any reference to appeal in Chapter XVIII and the Second Schedule to the Income-tax Act, 1961 (43 of 1961), shall be construed as a reference to appeal before the Competition Appellate Tribunal under section 53B of this Act.

#### **Omitted by competition (Amendment) Act, 2007 [Section 40]**

### **4.5 DUTIES OF DIRECTOR GENERAL**

#### **Director General to investigate contravention [Section 41]**

- (1) The Director General shall, when so directed by the Commission, assist the Commission in investigating into any contravention of the provisions of this Act or any rules or regulations made thereunder.
- (2) The Director General shall have all the powers as are conferred upon the Commission under subsection (2) of section 36.
- (3) Without prejudice to the provisions of sub-section (2), sections 240 and 240A of the Companies Act, 1956 (1 of 1956), so far as may be, shall apply to an investigation made by the Director General or any other person investigating under his authority, as they apply to an inspector appointed under that Act.

Explanation : For the purposes of this section, -

- (a) the words 'the Central Government' under section 240 of the Companies Act, 1956 (1 of 1956) shall be construed as "the Commission";
- (b) the word "Magistrate" under section 240A of the Companies Act, 1956 (1 of 1956) shall be construed as "the Chief Metropolitan Magistrate, Delhi".

### **4.6 PENALTIES**

#### **Contravention of orders of Commission [Section 42]**

- (1) The Commission may cause an inquiry to be made into compliance of its orders or directions made in exercise of its powers under the Act.
- (2) If any person, without reasonable cause, fails to comply with the orders or directions of the Commission issued under sections 27, 28, 31, 32, 33, 42A and 43A of the Act, he shall be punishable with fine which may extend to rupees one lakh for each day during which such non-compliance occurs subject to a maximum of rupees ten crore, as the Commission may determine.
- (3) If any person does not comply with the orders or directions issued, or fails to pay the fine imposed under sub-section (2), he shall, without prejudice to any proceeding under section 39, be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to rupees twenty five crore, or with both, as the Chief Metropolitan Magistrate, Delhi may deem fit:

Provided that the Chief Metropolitan Magistrate, Delhi shall not take cognizance of any offence under this section save on a complaint filed by the Commission or any of its officers authorised by it.

#### **Compensation in case of contravention of orders of Commission [Section 42A]**

Without prejudice to the provisions of this Act, any person may make an application to the Appellate Tribunal for an order for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered, by such person as a result of the said enterprise violating directions





issued by the Commission or contravening, without any reasonable ground, any decision or order of the Commission issued under sections 27, 28, 31, 32, and 33 or any condition or restriction subject to which any approval, sanction, direction or exemption in relation to any matter has been accorded, given, made or granted under this Act or delaying in carrying out such orders or directions of the Commission.

#### **Penalty for failure to comply with directions of Commission and Director General [Section 43]**

If any person fails to comply, without reasonable cause, with a direction given by—

- (a) the Commission under sub-sections (2) and (4) of section 36; or
- (b) the Director General while exercising powers referred to in sub-section (2) of section 41,

such person shall be punishable with fine which may extend to rupees one lakh for each day during which such failure continues subject to a maximum of rupees one crore, as may be determined by the Commission.

#### **Power to impose penalty for non-furnishing of information on combinations [Section 43A]**

If any person or enterprise who fails to give notice to the Commission under sub-section (2) of section 6, the Commission shall impose on such person or enterprise a penalty which may extend to one percent of the total turnover or the assets, whichever is higher, of such combination.

#### **Penalty for making false statement or omission to furnish material information [Section 44]**

If any person, being a party to a combination,—

- (a) makes a statement which is false in any material particular, or knowing it to be false; or
- (b) omits to state any material particular knowing it to be material, such person shall be liable to a penalty which shall not be less than rupees fifty lakhs but which may extend to rupees one crore, as may be determined by the Commission.

#### **Penalty for offences in relation to furnishing of information [Section 45]**

- (1) Without prejudice to the provisions of section 44, if a person, who furnishes or is required to furnish under this Act any particulars, documents or any information,—
  - (a) makes any statement or furnishes any document which he knows or has reason to believe to be false in any material particular; or
  - (b) omits to state any material fact knowing it to be material; or
  - (c) willfully alters, suppresses or destroys any document which is required to be furnished as aforesaid,

such person shall be punishable with fine which may be extend to rupees one crore as may be determined by the Commission.

- (2) Without prejudice to the provisions of sub-section (1), the Commission may also pass such other order as it deems fit.

#### **Power to impose lesser penalty [Section 46]**

The Commission may, if it is satisfied that any producer, seller, distributor, trader or service provider included in any cartel, which is alleged to have violated section 3, has made a full and true disclosure in respect of the alleged violations and such disclosure is vital, impose upon such producer, seller, distributor, trader or service provider a lesser penalty as it may deem fit, than leviable under this Act or the rules or the regulations:

Provided that lesser penalty shall not be imposed by the Commission in cases where the report of the investigation directed under section 26 has been received before making of such disclosure:

Provided further that lesser penalty shall be imposed by the Commission only in respect of a producer, seller, distributor, trader or service provider included in the cartel, who has made the full, true and vital disclosures under this section:

**Provided also** that lesser penalty shall not be imposed by the Commission if the person making the disclosure does not continue to cooperate with the Commission till the completion of the proceedings before the Commission:

Provided also that the Commission may, if it is satisfied that such producer, seller, distributor, trader or service provider included in the cartel had in the course of proceedings,—

- (a) not complied with the condition on which the lesser penalty was imposed by the Commission; or
- (b) had given false evidence; or
- (c) the disclosure made is not vital,

and thereupon such producer, seller, distributor, trader or service provider may be tried for the offence with respect to which the lesser penalty was imposed and shall also be liable to the imposition of penalty to which such person has been liable, had lesser penalty not been imposed.

#### **Crediting sums realised by way of penalties to Consolidated Fund of India [Section 47]**

All sums realised by way of penalties under this Act shall be credited to the Consolidated Fund of India.

#### **Contravention by companies [Section 48]**

- (1) Where a person committing contravention of any of the provisions of this Act or of any rule, regulation, order made or direction issued thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

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

- (2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, regulation, order made or direction issued thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that contravention and shall be liable to be proceeded against and punished accordingly.

Explanation : For the purposes of this section,—

- (a) “Company” means a body corporate and includes a firm or other association of individuals: and
- (b) “Director”, in relation to a firm, means a partner in the firm.

### **4.7 COMPETITION ADVOCACY**

#### **Competition Advocacy [Section 49]**

- (1) The Central Government may, in formulating a policy on competition (including review of laws related to competition), or any other matter, and a State Government may, in formulating a

policy on competition or on any other matter, as the case may be, make a reference to the Commission for its opinion on possible effect of such policy on competition and on receipt of such a reference, the Commission shall, within sixty days of making such reference, give its opinion to the Central Government or the State Government as the case may be, which may thereafter take further action as it deems fit.

- (2) The opinion given by the Commission under sub-section (1) shall not be binding upon the Central Government or the state Government as the case may be in formulating such policy.
- (3) The Commission shall take suitable measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues.

## 4.8 FINANCE, ACCOUNTS AND AUDIT

### Grants by Central Government [Section 50]

The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Commission grants of such sums of money as the Government may think fit for being utilised for the purposes of this Act.

### Constitution of Fund [Section 51]

- (1) There shall be constituted a fund to be called the "Competition Fund" and there shall be credited thereto—
  - (a) All Government grants received by the Commission;
  - (b) Omitted vide Amendment Act 2007;
  - (c) The fees received under this Act;
  - (d) The interest accrued on the amounts referred to in clauses (a) and (c).
- (2) The Fund shall be applied for meeting—
  - (a) the salaries and allowances payable to the Chairperson and other Members and the administrative expenses including the salaries, allowances and pension payable to the Director General, Additional Joint Deputy or Assistant Directors General, the Registrar and officers and other employees of the Commission;
  - (b) The other expenses of the Commission in connection with the discharge of its functions and for the purposes of this Act.
- (3) The Fund shall be administered by a committee of such Members of the Commission as may be determined by the Chairperson.
- (4) The committee appointed under sub-section (3) shall spend monies out of the Fund for carrying out the objects for which the Fund has been constituted.

### Accounts and Audit [Section 52]

- (1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.
- (2) The accounts of the Commission shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Commission to the Comptroller and Auditor-General of India.

**Explanation.-** For the removal of doubts, it is hereby declared that the orders of the Commission,

being matters appealable to the Appellate Tribunal or the Supreme Court, shall not be subject to audit under this section.

- (3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Commission shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India generally has, in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission.
- (4) The accounts of the Commission as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

#### **Furnishing of returns, etc., to Central Government [Section 53]**

- (1) The Commission shall furnish to the Central Government at such time and in such form and manner as may be prescribed or as the Central Government may direct, such returns and statements and such particulars in regard to any proposed or existing measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues, as the Central Government may, from time to time, require.
- (2) The Commission shall prepare once in every year, in such form and at such time as may be prescribed, an annual report giving a true and full account of its activities during the previous year and copies of the report shall be forwarded to the Central Government.
- (3) A copy of the report received under sub-section (2) shall be laid, as soon as may be after it is received, before each House of Parliament.

### **4.9 COMPETITION APPELLATE TRIBUNAL**

#### **Establishment of Appellate Tribunal [Section 53A]**

- (1) The Central Government shall, by notification, establish an Appellate Tribunal to be known as Competition Appellate Tribunal –
  - (a) to hear and dispose of appeals against any direction issued or decision made or order passed by the Commission under sub-sections (2) and (6) of section 26, section 27, section 28, section 31, section 32, section 33, section 38, section 39, section 43, section 43A, section 44, section 45 or section 46 of the Act;
  - (b) to adjudicate on claim for compensation that may arise from the findings of the Commission or the orders of the Appellate Tribunal in an appeal against any finding of the Commission or under section 42A or under subsection (2) of section 53Q of this Act, and pass orders for the recovery of compensation under section 53N of this Act.
- (2) The Headquarter of the Appellate Tribunal shall be at such place as the Central Government may, by notification, specify.

#### **Appeal to Appellate Tribunal [Section 53B]**

- (1) The Central Government or the State Government or a local authority or enterprise or any person, aggrieved by any direction, decision or order referred to in clause (a) of section 53A may prefer an appeal to the Appellate Tribunal.
- (2) Every appeal under sub-section (1) shall be filed within a period of sixty days from the date on which a copy of the direction or decision or order made by the Commission is received by the



Central Government or the State Government or a local authority or enterprise or any person referred to in that sub-section and it shall be in such form and be accompanied by such fee as may be prescribed:

**Provided that** the Appellate Tribunal may entertain an appeal after the expiry of the said period of sixty days if it is satisfied that there was sufficient cause for not filing it within that period.

- (3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the direction, decision or order appealed against.
- (4) The Appellate Tribunal shall send a copy of every order made by it to the Commission and the parties to the appeal.
- (5) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal within six months from the date of receipt of the appeal.

### **Composition of Appellate Tribunal [Section 53C]**

The Appellate Tribunal shall consist of a Chairperson and not more than two other members to be appointed by the Central Government.

### **Qualifications for appointment of Chairperson and Members of Appellate Tribunal [Section 53D]**

- (1) The Chairperson of the Appellate Tribunal shall be a person, who is, or has been a Judge of the Supreme Court or the Chief Justice of a High Court.
- (2) A member of the Appellate Tribunal shall be a person of ability, integrity and standing having special knowledge of, and professional experience of not less than twenty five years in, competition matters including competition law and policy, international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration or in any other matter which in the opinion of the Central Government, may be useful to the Appellate Tribunal.

### **Selection Committee [Section 53E]**

- (1) The Chairperson and members of the Appellate Tribunal shall be appointed by the Central Government from a panel of names recommended by a Selection Committee consisting of –
  - (a) the Chief Justice of India or his nominee ..... Chairperson;
  - (b) the Secretary in the Ministry of Corporate Affairs ..... Member;
  - (c) the Secretary in the Ministry of Law and Justice .....Member.
- (2) The terms of the Selection Committee and the manner of selection of panel of names shall be such as may be prescribed.

### **Term of office of Chairperson and Members of Appellate Tribunal [Section 53F]**

The Chairperson or a member of the Appellate Tribunal shall hold office as such for a term of five years from the date on which he enters upon his office, and shall be eligible for re-appointment:

Provided that no Chairperson or other member of the Appellate Tribunal shall hold office as such after he has attained, -

- (a) in the case of the Chairperson, the age of sixty-eight years;
- (b) in the case of any other member of the Appellate Tribunal, the age of sixty-five years.

### **Terms and conditions of service of chairperson and Members of Appellate Tribunal [Section 53G]**

- (1) The salaries and allowances and other terms and conditions of service of the Chairperson and other members of the Appellate Tribunal shall be such as may be prescribed.
- (2) The salaries, allowances and other terms and conditions of service of the Chairperson and other members of the Appellate Tribunal shall not be varied to their disadvantage after their appointment.

#### **Vacancies [Section 53H]**

If, for any reason other than temporary absence, any vacancy occurs in the office of the Chairperson or a member of the Appellate Tribunal, the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Appellate Tribunal from the stage at which the vacancy is filled.

#### **Resignation of Chairperson and Members of Appellate Tribunal [Section 53-I]**

The Chairperson or a member of the Appellate Tribunal may, by notice in writing under his hand addressed to the Central Government, resign his office:

**Provided that** the Chairperson or a member of the Appellate Tribunal shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

#### **Member of Appellate Tribunal to act as its Chairperson in certain cases [Section 53J]**

- (1) In the event of the occurrence of any vacancy in the office of the Chairperson of the Appellate Tribunal by reason of his death or resignation, the senior-most Member of the Appellate Tribunal shall act as the Chairperson of the Appellate Tribunal until the date on which a new Chairperson appointed in accordance with the provisions of this Act to fill such vacancy enters upon his office.
- (2) When the Chairperson of the Appellate Tribunal is unable to discharge his functions owing to absence, illness or any other cause, the senior-most member or, as the case may be, such one of the Members of the Appellate Tribunal, as the Central Government may, by notification, authorize in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

#### **Removal and suspension of Chairperson and Members of Appellate Tribunal [Section 53K]**

- (1) The Central Government may, in consultation with the Chief Justice of India, remove from office the Chairperson or any other member of the Appellate Tribunal, who-
  - (a) has been adjudged an insolvent; or
  - (b) has engaged at any time, during his terms of office, in any paid employment; or
  - (c) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
  - (d) has become physically or mentally incapable of acting as such Chairperson or other Member of the Appellate Tribunal; or
  - (e) has acquired such financial or other interest as is likely to affect prejudicially his functions as such Chairperson or Member of the Appellate Tribunal; or
  - (f) has so abused his position as to render his continuance in office prejudicial to the public interest.
- (2) Notwithstanding anything contained in sub-section (1), no Chairperson or a Member of the Appellate Tribunal shall be removed from his office on the ground specified in clause (e) or clause (f) of sub-section (1) except by an order made by the Central Government after an inquiry made



in this behalf by a Judge of the Supreme Court in which such Chairperson or member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

### **Restriction on employment of Chairperson and other Members of Appellate Tribunal in certain cases [Section 53L]**

The Chairperson and other members of the Appellate Tribunal shall not, for a period of two years from the date on which they cease to hold office, accept any employment in, or connected with the management or administration of, any enterprise which has been a party to a proceeding before the Appellate Tribunal under this Act:

**Provided** that nothing contained in this section shall apply to any employment under the Central Government or a State Government or local authority or in any statutory authority or any corporation established by or under any Central, State or Provincial Act or a Government Company as defined in section 617 of the Companies Act, 1956.

### **Staff of Appellate Tribunal [Section 53M]**

- (1) The Central Government shall provide the Appellate Tribunal with such officers and other employees as it may think fit.
- (2) The officers and other employees of the Appellate Tribunal shall discharge their functions under the general superintendence and control of the Chairperson of the Appellate Tribunal.
- (3) The salaries and allowances and other conditions of service of the officers and other employees of the Appellate Tribunal shall be such as may be prescribed.

### **Awarding compensation [Section 53N]**

- (1) Without prejudice to any other provisions contained in this Act, the Central Government or a State Government or a local authority or any enterprise or any person may make an application to the Appellate Tribunal to adjudicate on claim for compensation that may arise from the findings of the Commission or the orders of the Appellate Tribunal in an appeal against any findings of the Commission or under section 42A or under sub-section (2) of section 53Q of the Act, and to pass an order for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered, by the Central Government or a State Government or a local authority or any enterprise or any person as a result of any contravention of the provisions of Chapter II, having been committed by enterprise.
- (2) Every application made under sub-section (1) shall be accompanied by the findings of the Commission, if any, and also be accompanied with such fees as may be prescribed.
- (3) The Appellate Tribunal may, after an inquiry made into the allegations mentioned in the application made under sub-section (1), pass an order directing the enterprise to make payment to the applicant, of the amount determined by it as realisable from the enterprise as compensation for the loss or damage caused to the applicant as a result of any contravention of the provisions of Chapter II having been committed by such enterprise:

Provided that the Appellate Tribunal may obtain the recommendations of the Commission before passing an order of compensation.

- (4) Where any loss or damage referred to in sub-section (1) is caused to numerous persons having the same interest, one or more of such persons may, with the permission of the Appellate Tribunal, make an application under that sub-section for and on behalf of, or for the benefit of, the persons so interested, and thereupon, the provisions of rule 8 of Order 1 of the First Schedule to the Code of Civil Procedure, 1908, shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to the application before the Appellate Tribunal and the order of the Appellate Tribunal thereon.

**Explanation.-** For the removal of doubts, it is hereby declared that—

- (a) an application may be made for compensation before the Appellate Tribunal only after either the Commission or the Appellate Tribunal on appeal under clause (a) of sub-section(1) of section 53A of the Act, has determined in a proceeding before it that violation of the provisions of the Act has taken place, or if provisions of section 42A or sub-section(2) of section 53Q of the Act are attracted.
- (b) enquiry to be conducted under sub-section(3) shall be for the purpose of determining the eligibility and quantum of compensation due to a person applying for the same, and not for examining afresh the findings of the Commission or the Appellate Tribunal on whether any violation of the Act has taken place.

**Procedures and powers of Appellate Tribunal [Section 53O]**

- (1) The Appellate Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules made by the Central Government, the Appellate Tribunal shall have power to regulate its own procedure including the places at which they shall have their sittings.
- (2) The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:-
  - (a) summoning and enforcing the attendance of any person and examining him on oath;
  - (b) requiring the discovery and production of documents;
  - (c) receiving evidence on affidavit;
  - (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;
  - (e) issuing commissions for the examination of witnesses or documents;
  - (f) reviewing its decisions;
  - (g) dismissing a representation for default or deciding it ex parte;
  - (h) setting aside any order of dismissal of any representation for default or any order passed by it ex parte;
  - (i) any other matter which may be prescribed.
- (3) Every proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code (45 of 1860) and the Appellate Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

**Execution of orders of Appellate Tribunal [Section 53P]**

- (1) Every order made by the Appellate Tribunal shall be enforced by it in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the Appellate Tribunal to send, in case of its inability to execute such order, to the court within the local limits of whose jurisdiction,-
  - (a) in the case of an order against a company, the registered office of the company is situated;  
or

- (b) in the case of an order against any other person, place where the person concerned voluntarily resides or carries on business or personally works for gain, is situated.
- (2) Notwithstanding anything contained in sub-section (1), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

#### **Contravention of orders of Appellate Tribunal [Section 53Q]**

- (1) Without prejudice to the provisions of this Act, if any person contravenes, without any reasonable ground, any order of the Appellate Tribunal, he shall be liable for a penalty of not exceeding rupees one crore or imprisonment for a term up to three years or with both as the Chief Metropolitan Magistrate, Delhi may deem fit:

**Provided** that the Chief Metropolitan Magistrate, Delhi shall not take cognizance of any offence punishable under this sub-section, save on a complaint made by an officer authorized by the Appellate Tribunal.

- (2) Without prejudice to the provisions of this Act, any person may make an application to the Appellate Tribunal for an order for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered, by such person as a result of the said enterprise contravening, without any reasonable ground, any order of the Appellate Tribunal or delaying in carrying out such orders of the Appellate Tribunal.

#### **Vacancy in Appellate Tribunal not to invalidate acts or proceedings [Section 53R]**

No act or proceeding of the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of existence of any vacancy or defect in the constitution of the Appellate Tribunal.

#### **Right to legal representation [Section 53S]**

- (1) A person preferring an appeal to the Appellate Tribunal may either appear in person or authorize one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Appellate Tribunal.
- (2) The Central Government or a State Government or a local authority or any enterprise preferring an appeal to the Appellate Tribunal may authorize one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to act as presenting officers and every person so authorized may present the case with respect to any appeal before the Appellate Tribunal.
- (3) The Commission may authorize one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to act as presenting officers and every person so authorized may present the case with respect to any appeal before the Appellate Tribunal.

**Explanation.-** The expressions "chartered accountant" or "company secretary" or "cost accountant" or "legal practitioner" shall have the meanings respectively assigned to them in the Explanation to section 35.

#### **Appeal to Supreme Court [Section 53T]**

The Central Government or any State Government or the Commission or any statutory authority or any local authority or any enterprise or any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to them;

**Provided** that the Supreme court may, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed after the expiry of the said period of sixty days.

### **Power to Punish for contempt [Section 53U]**

The Appellate Tribunal shall have, and exercise, the same jurisdiction, powers and authority in respect of contempt of itself as a High Court has and may exercise and, for this purpose, the provisions of the Contempt of Courts Act, 1971 shall have effect subject to modifications that,—

- (a) the reference therein to a High Court shall be construed as including a reference to the Appellate Tribunal;
- (b) the references to the Advocate-General in section 15 of the said Act shall be construed as a reference to such Law Officer as the Central Government may, by notification, specify in this behalf.

## **4.10 MISCELLANEOUS**

### **Power to exempt [Section 54]**

The Central Government may, by notification, exempt from the application of this Act, or any provision thereof, and for such period as it may specify in such notification—

- (a) any class of enterprises if such exemption is necessary in the interest of security of the State or public interest;
- (b) any practice or agreement arising out of and in accordance with any obligation assumed by India under any treaty, agreement or convention with any other country or countries;
- (c) any enterprise which performs a sovereign function on behalf of the Central Government or a State Government.

**Provided** that in case an enterprise is engaged in any activity including the activity relatable to the sovereign functions of the Government, the Central Government may grant exemption only in respect of activity relatable to the sovereign functions.

### **Power of Central Government to issue directions [Section 55]**

- (1) Without prejudice to the foregoing provisions of this Act, the Commission shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on questions of policy, other than those relating to technical and administrative matters, as the Central Government may give in writing to it from time to time:

**Provided** that the Commission shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

- (2) The decision of the Central Government whether a question is one of policy or not shall be final.

### **Power of Central Government to supersede Commission [Section 56]**

- (1) If at any time the Central Government is of the opinion—
  - (a) that on account of circumstances beyond the control of the Commission, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or
  - (b) that the Commission has persistently made default in complying with any direction given by the Central Government under this Act or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act and as a result of such default the financial position of the Commission or the administration of the Commission has suffered; or
  - (c) that circumstances exist which render it necessary in the public interest so to do,

the Central Government may, by notification and for reasons to be specified therein, supersede the Commission for such period, not exceeding six months, as may be specified in the notification:

Provided that before issuing any such notification, the Central Government shall give a reasonable opportunity to the Commission to make representations against the proposed supersession and shall consider representations, if any, of the Commission.

- (2) Upon the publication of a notification under sub-section (1) superseding the Commission,—
  - (a) The Chairperson and other Members shall as from the date of supersession, vacate their offices as such;
  - (b) All the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Commission shall, until the Commission is reconstituted under sub-section (3), be exercised and discharged by the Central Government or such authority as the Central Government may specify in their behalf;
  - (c) All properties owned or controlled by the Commission shall, until the Commission is reconstituted under sub-section (3), vest in the Central Government.
- (3) On or before the expiration of the period of supersession specified in the notification issued under subsection (1), the Central Government shall reconstitute the Commission by a fresh appointment of its Chairperson and other Members and in such case any person who had vacated his office under clause (a) of sub-section (2) shall not be deemed to be disqualified for re-appointment.
- (4) The Central Government shall cause a notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

#### **Restriction on disclosure of information [Section 57]**

No information relating to any enterprise, being an information which has been obtained by or on behalf of the Commission or the Appellate Tribunal for the purposes of this Act, shall, without the previous permission in writing of the enterprise, be disclosed otherwise than in compliance with or for the purposes of this Act or any other law for the time being in force.

#### **Chairperson, Members, Director General, Secretary, officers and other employees, etc., to be public servants [Section 58]**

The Chairperson and other Members and the Director General, Additional, Joint, Deputy or Assistant Directors General and Secretary and officers and other employees of the Commission and the Chairperson, Members, officers and other employees of the Appellate Tribunal shall be deemed, while acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code.

#### **Protection of action taken in good faith [Section 59]**

No suit, prosecution or other legal proceedings shall lie against the Central Government or Commission or any officer of the Central Government or the Chairperson or any Member or the Director-General, Additional, Joint, Deputy or Assistant Directors General or the Secretary or officers or other employees of the Commission or the Chairperson, members, officers and other employees of the Appellate Tribunal for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

#### **Act to have overriding effect [Section 60]**

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

### **Exclusion of jurisdiction of civil courts [Section 61]**

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Commission or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

### **Application of other laws not barred [Section 62]**

The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

### **Power to make rules [Section 63]**

- (1) The Central Government may, by notification, make rules to carry out the provisions of this Act;
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-
  - (a) the term of the Selection Committee and the manner of selection of panel of names under sub-section (2) of Section 9;
  - (b) the form and manner in which and the authority before whom the oath of office and of secrecy shall be made and subscribed to under sub-section (3) of section 10;
  - (c) Omitted.
  - (d) the salary and the other terms and conditions of service including travelling expenses, house rent allowance and conveyance facilities, sumptuary allowance and medical facilities to be provided to the Chairperson and other Members under sub-section (1) of section 14;
  - (da) the number of Additional, Joint, Deputy or Assistant Directors General or such officers or other employees in the office of Director General and the manner in which such Additional, Joint, Deputy or Assistant Directors General or such officers or other employees may be appointed under sub-section (1A) of section 16; ]
  - (e) the salary, allowances and other terms and conditions of service of the Director General, Additional, Joint, Deputy or Assistant Directors General or [such officers or other employees] under sub-section (3) of section 16;
  - (f) the qualifications for appointment of the Director General, Additional, Joint, Deputy or Assistant Directors General or [such officers or other employees] under sub-section (4) of section 16;
  - (g) the salaries and allowances and other terms and conditions of service of the [Secretary] and officers and other employees payable, and the number of such officers and employees under sub-section (2) of section 17;
  - (h) [\*\*\*] Omitted
  - (i) [\*\*\*] Omitted
  - (j) [\*\*\*] Omitted
  - (k) the form in which the annual statement of accounts shall be prepared under sub-section (1) of section 52;
  - (1a) the time within which and the form and manner in which the Commission may furnish returns, statements and such particulars as the Central Government may require under sub-section (1b) of section 53;
  - (m) the form in which and the time within which the annual report shall be prepared under sub-





section (2) of section 53;

- (ma) the form in which an appeal may be filed before the Appellate Tribunal under sub-section (2) of section 53B and the fees payable in respect of such appeal;
  - (mb) the term of the Selection Committee and the manner of selection of panel of names under sub-section(2) of section 53E;
  - (mc) the salaries and allowances and other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal under sub-section (1) of section 53G;
  - (md) the salaries and allowances and other conditions of service of the officers and other employees of the Appellate Tribunal under sub-section (3) of section 53M;
  - (me) the fee which shall be accompanied with every application made under sub-section (2) of section 53N;
  - (mf) the other matters under clause (i) of sub-section(2) of section 53O in respect of which the Appellate Tribunal shall have powers under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit;
  - (n) the manner in which the monies transferred to the Competition Commission of India or the Appellate Tribunal shall be dealt with by the Commission or the Appellate Tribunal, as the case may be, under the fourth proviso to sub-section (2) of section 66;
  - (o) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be, or may be, made by rules.
- (3) Every notification issued under sub-section(3) of section 20 and section 54 and every rule made under this Act by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session, or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or rule, or both Houses agree that the notification should not be issued or rule should not be made, the notification or rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule, as the case may be.

#### **Power to make regulations [Section 64]**

- (1) The Commission may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing provisions, such regulations may provide for all or any of the following matters, namely:-
  - (a) the cost of production to be determined under clause (b) of the Explanation to section 4;
  - (b) the form of notice as may be specified and the fee which may be determined under sub-section (2) of section 6;
  - (c) the form in which details of the acquisition shall be filed under sub-section(5) of Section 6;
  - (d) the procedures to be followed for engaging the experts and professionals under sub-section (3) of section 17;
  - (e) the fee which may be determined under clause (a) of sub-section (1) of section 19;
  - (f) the rules of procedure in regard to the transaction of business at the meetings of the Commission under sub-section (1) of section 22;

- (g) the manner in which penalty shall be recovered under sub-section (1) of section 39;
  - (h) any other matter in respect of which provision is to be, or may be, made by regulations.
- (3) Every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation, or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.

**Power to remove difficulties [Section 65]**

- (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as may appear to it to be necessary for removing the difficulty :

**Provided** that no such order shall be made under this section after the expiry of a period of two years from the commencement of this Act.

- (2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

**Repeal and Saving [Section 66]**

- (1) The Monopolies and Restrictive Trade Practices Act, 1969 is hereby repealed and the Monopolies and Restrictive Trade Practices Commission established under sub-section (1) of section 5 of the said Act shall stand dissolved.

-Deleted by Competition (Amendment) Act 2009

**Explanation.**—Deleted by Competition (Amendment) Act 2009

- (1A) The repeal of the Monopolies and Restrictive Trade Practices Act, 1969 shall, however, not affect—
- (a) the previous operation of the Act so repealed or anything duly done or suffered thereunder; or
  - (b) any right, privilege, obligations or liability acquired, accrued or incurred under the Act so repealed; or
  - (c) any penalty confiscation or punishment incurred in respect of any contravention under the Act so repealed; or
  - (d) any proceeding or remedy in respect of any such right, privilege obligation, liability, penalty, confiscation or punishment as aforesaid and any such proceeding or remedy may be instituted, continued or enforced and any such penalty, confiscation or punishment may be imposed or made as if that Act had not been repealed.
2. On dissolution of the MRTP Commission, the person appointed as the Chairman of the MRTP Commission and every other person appointed as members and Director General of Investigation and Registration, Additional, Joint ,Deputy or Assistant Director General of Investigation and Registration and any officer and other employee of that Commission and holding office as such immediately before such dissolution shall vacate their respective offices and such Chairman and other Members shall be entitled to claim compensation not exceeding three months' pay and allowance for the premature termination of term of their office or of any contract of service.

**Provided** that the Director General of Investigation and Registration, Additional, Joint, Deputy or assistant Director General of Investigation and Registration or any officer or other employee who

has been, immediately before the dissolution of the MTRP commission appointed on deputation basis to the MRTP Commission, shall, on such dissolution, stand reverted to his parent cadre, Ministry or Department, as the case may be.

**Provided further** that the Director General of Investigation and Registration, Additional, Joint, Deputy or Assistant Director General of Investigation and Registration or any officer or other employee who has been, immediately before the dissolution of the Monopolies and Restrictive Trade Commission, employed on regular basis by the Monopolies and Restrictive Trade Commission, shall become, on and from such dissolution, the officer and employee, respectively, of the Competition Commission of India or the Appellate Tribunal, in such manner as may be specified by the Central Government, with the same right and privileges as to pension, gratuity and other like matters as would have been admissible to him if the rights in relation to such Monopolies and Restrictive Trade Practices Commission had not been transferred to, and vested in, the Competition Commission of India or the Appellate tribunal, as the case may be, and shall continue to do so unless and until his employment in the Competition Commission of India or the Appellate Tribunal, as the case may be, is duly terminated or until his remuneration, terms and conditions of employment are duly altered by the Competition Commission of India or the Appellate Tribunal, as the case may be.

**Provided** also that notwithstanding anything contained in the Industrial Disputes Act 1947 or in any other law for the time being in force, the transfer of the services of any Director General of Investigation and Registration, Additional, Joint, Deputy or Assistant Director General of Investigation and Registration or any officer or other employee employed in the Monopolies and Restrictive Trade Practices Commission, to the Competition Commission of India or the Appellate tribunal as the case may be, shall not entitle such the Director General of Investigation and Registration, Additional, Joint, Deputy or Assistant Director General of Investigation and Registration or any officer or other employee any compensation under this Act or any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority.

**Provided** also that where the MRTP Commission has established a provident fund, superannuation, welfare or other fund for the benefit of the Director General of Investigation and Registration, Additional, Joint, Deputy or Assistant Director General of Investigation and Registration or any officers and other employee employed in the Monopolies and Restrictive Trade Commission, the monies relatable to the officers and other employees whose services have been transferred by or under this Act to the Competition Commission of India or the Appellate Tribunal, as the case may be, shall, out of the monies standing on the dissolution of MRTP commission to the credit of such provident fund, superannuation, welfare or other fund, stand transferred to and vest in, the Competition Commission of India or the Appellate Tribunal as the case may be, and such monies which stand so transferred shall be dealt with by the said commission or the Tribunal as the case may be, in such manner as may be prescribed.

- (3) All cases pertaining to monopolistic trade practices or restrictive trade practices pending (including such case, in which any unfair trade practice has also been alleged) before the MRTP Commission shall, on the commencement of the Competition (Amendment) Act 2009 referred to the Appellate Tribunal and shall be adjudicated by the Appellate Tribunal in accordance with the provisions of the repealed Act as if that Act had not been repealed.

**Explanation.**-For removal of doubts, it is hereby declared that all cases referred to in this sub-section, sub-section(4) and sub-section(5) shall be deemed to include all applications made for the losses or damages under section 12B of the MRTP Act, 1969 as it stood before its repeal.

- (4) Subject to the provisions of sub section (3), all cases pertaining to unfair trade practices other than those referred to in clause (x) of sub section(1) of section 36A of MRTP Act 1969 and pending before the MRTP commission immediately before the commencement of the Competition

(Amendment) Act 2009, shall, on such commencement, shall, stand transferred to the National Commission constituted under the Consumer Protection Act 1986 and the National Commission shall dispose of such cases as if they were cases filed under this Act.

**Provided** that the National Commission may if it considers appropriate transfer any case transferred to it under this sub-section, to the concerned State Commission established under section 9 of the Consumer Protection Act, 1986 and the state Commission shall dispose of such case as if it was filed under that Act.

**Provided further** that all the cases relating to the unfair trade practices pending, before the National Commission under this sub section on or before the date on which the Competition (Amendment) Bill, 2009 receives the assent of the President, shall, on and from that date, stand transferred to the Appellate Tribunal and be adjudicated by the Appellate Tribunal in accordance with the provisions of the repealed Act as if that Act has not been repealed.

- (5) All cases pertaining to the unfair trade practices referred to in clause(x) of sub-section(1) of section 36A of MRTP Act, 1969 and pending before the MRTP Commission shall, on commencement of the Competition (Amendment) Act, 2009 stand transferred to the Appellate Tribunal and the Appellate Tribunal shall dispose of such cases as if they were cases filed under that Act.
- (6) All investigation or proceedings other than those relating to unfair trade practice pending before the Directorate General of Investigation and Registration on or before the commencement of this Act shall, on such commencement, stand transferred to the Competition Commission of India, and the Competition Commission of India may conduct or order for conduct of such investigation or proceedings in the manner as it deems fit.
- (7) All investigation or proceedings, relating to unfair trade practices, other than those referred to in clause(x) sub section (1) of section 36A of the MRTP Act, 1969 and pending before the Director General of Investigation and Registration on or before the commencement of this Act shall on such commencement, stand transferred to the National Commission constituted under the Consumer Protection Act, 1986 and the National Commission may conduct or order for conduct of such investigation or proceedings in the manner as it deems fit.

**Provided** that all investigations or proceedings, relating to unfair trade practice pending before the National Commission, on or before the date on which the Competition (Amendment) Bill, 2009 receives the assent of the President shall, on and from that date, stand standard transferred to the Appellate Tribunal and the Appellate Tribunal may conduct or order for conduct of such investigation or proceedings in the manner as it deems fit.

- (8) All investigation or proceedings relating to unfair trade practices referred to in clause(x) of sub section of section 36A of the MRTP Act, 1969 and pending before the Director General of Investigation and Registration on or before the commencement of this Act shall, on such commencement stand transferred to the Competition Commission of India and the Competition Commission of India may conduct or order for conduct of such investigation or proceedings in the manner as it deems fit.
- (9) Save as otherwise provided under sub section (3) to (8), all cases or proceeding pending before the MRTP commission shall abate.