भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India

# SEBI (ICDR),2018

JK SHAH CLASSES

# INTRODUCTION

Repealing the SEBI (ICDR) Regulations, 2009, SEBI has recently notified new SEBI (ICDR) Regulations, 2018 on 11th September, 2018. These new regulations came into effect from the end of 60th day of the date of publication i.e. 11th November, 2018

# Stages of an Issue

The whole process of issue of shares can be divided into two parts:

- ✓ Pre-issue activities, and
- ✓ Post-issue activities

# Pre-issue Activities:

All activities beginning with the planning of capital issue till the opening of the subscription list are pre-issue activities.

# Post-issue Activities:

All activities subsequent to the opening of the subscription list may be called post issue activities.

# IMPORTANT DEFINITIONS

QIB means:

i. MF, VCF investor registered with the SEBI; ‘

ii. A FII and sub-account registered with the SEBI;

iii. A PFI;

iv. A SCB;

v. A multilateral and bilateral development financial institution;

vi. A State industrial development corporation;

vii. Insurance company registered with the IRDA;

viii. A PF with minimum corpus of Rs. 25 crore;

ix. A pension fund with minimum corpus of Rs. 25 crore;

x. National Investment Fund set up by resolution of the GOI published in the Gazette; xi. Insurance funds set up and managed by army, navy or air force; xii. Insurance funds set up and managed by the Department of Posts, India

Anchor Investor: Means a QIB who makes an application for the following values:

| Case | Minimum value of Application |
|---|---|
| Public issue on the main board made through the book building process | At-least Rs. 10 Crore |
| Public issue of Small Medium Enterprises (SME) | At-least Rs. 2 Crore |

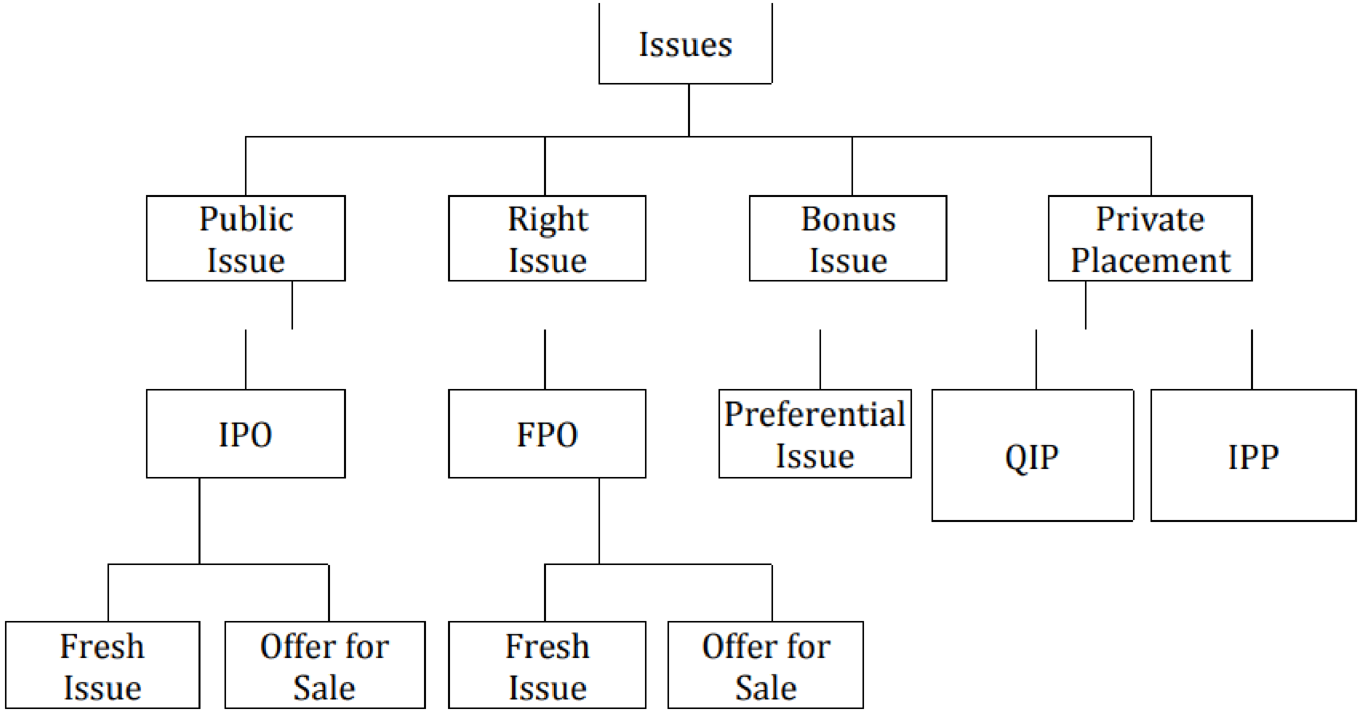
Reference Date:

Reference date means:

- In case of a public issue of securities by a listed company - the date of filing of red herring prospectus (in case of a book built issue) or prospectus (in case of a fixed price issue) with ROC;
- In case of a rights issue of securities by a listed company where the aggregate value of such securities, including premium, if any, exceeds Rs. 10 Cr - the date of filing of letter of offer with Designated Stock Exchange (DSE).

## TYPES OF ISSUES

Public Issue of shares means the selling of shares to the general public by issue of prospectus.



# Private placement of shares or convertible securities by listed issuer can be of 2 types:

(i) **Preferential Allotment:** When a listed company issues shares or convertible securities, to a select group of persons in terms of provisions of Chapter VII of SEBI (ICDR) Regulations, it is called a preferential allotment. The issuer is required to comply with various provisions which inter alia include pricing, disclosures in notice etc., in addition to requirements specified in Companies Act.

(ii) **QIP:** When a listed company issues equity shares or securities convertible into equity shares to QIBs only, it is called a QIP.

(iii)**IPP:** When a listed company issues equity shares or securities convertible into equity shares to QIBs only for the purpose of achieving minimum public shareholding it is called an IPP.

# INITIAL PUBLIC OFFER

When an unlisted public company offers its securities for sale for the 1st time to the general public, it is known as an IPO.

Eligibility-

An unlisted company can make an IPO of equity shares only if it fulfils the following conditions.

The company has:

i. Net tangible assets of at least Rs. 3 Cr in each of the preceding 3 full years, of which not more than 50% is held in monetary assets.

ii. Minimum Average Operating Profit of Rs. 15 Cr during preceding 3 years with operating profit in each of these preceding 3 years.

iii. Net worth of at least Rs. 1 Cr in each of the preceding 3 full years.

iv. In case of change of name of the company within the last 1 year, at least 50% of the revenue for the preceding 1 full year is being earned by the company from the activity suggested by the new name.

***Note: If a company does not satisfy the above conditions STILL it can bring an IPO only if it is made through the book-building process and the issuer undertakes to allot, at least 75% of the net offer to public, to QIB and to refund full subscription money if it fails to make the said minimum allotment to QIB.***

# Ineligibility

An issuer shall not be eligible to make an IPO if-

- The issuer, any of its promoters, promoter group or directors or selling shareholders are debarred from accessing the capital market by the SEBI.
- If any of the promoters or directors of the issuer is a promoter or director of any other company which is debarred from accessing the capital market by the SEBI.
- If the issuer or any of its promoters or directors is a wilful defaulter.
- If any of its promoters or directors is a fugitive economic offender.

# General Conditions

Appointment of Lead Merchant Banker, Intermediaries and Compliance Officer:

The issuer shall appoint one or more registered merchant bankers. If more than 1 merchant banker is appointed, then 1 should be designated as the lead merchant banker.

Other intermediaries will be appointed by the issuer in consultation of the lead merchant banker. The issuer shall appoint a compliance officer who will be responsible for monitoring the compliances of securities law.

# Filing of Offer Document:

- An issuer company cannot make any public issue of securities, unless a draft offer document has been filed with SEBI and proposed SE, through a MB. The SEBI can suggest changes within 30 days from the date of receipt of draft document by the SEBI. If the SEBI suggest changes, the same should be carried out by the issuer before registering the final offer document with the ROC or other authorities. Simultaneously a final copy of offer document shall also be filed with SEBI and SE.
- The draft offer document filed with the SEBI shall be made public on the website of SEBI and SE for comments of the public for at least 21 days from the date of filing.
- The issuer shall, within 2 days of filing the draft offer document, make a public announcement in national daily newspaper (English, Hindi, Regional), disclosing the fact of that public is invited for comments

**Application to Stock Exchange:**

An issuer company shall make application to one or more stock exchange after choosing one of them as a designated stock exchange.

**Promoter shareholding in Dematerialised Form:**

All its specified securities held by the promoters are in dematerialised form prior to filing of the offer document.

**Issue of Securities in Dematerialised Form:**

A company cannot make public issue unless the company enters into an agreement with a depository for dematerialisation of securities already issued or proposed to be issued to the public or existing shareholders.

All the existing partly paid-up shares must be made fully paid or forfeited.

# *Minimum Promoters Contribution*

In an IPO

The promoters of the issuer company must contribute at least 20% of the post-issue capital before the opening of the issue. In case the post-issue shareholding of the promoters is less than 20%, AIFs may contribute for the purpose of meeting the shortfall in minimum contribution, subject to a maximum of 10% of the post-issue capital.

Promoters shall bring in the full amount of the promoter's contribution including premium at least 1 day before opening date. The promoter's contribution shall be kept in an escrow account and the said contribution amount shall only be released to the company along with the public issue proceeds.

Where the promoter's contribution has been brought prior to the public issue and has already been deployed by the company, the company shall give the CFS in the offer document disclosing the use of such funds. If the promoter's contribution exceeds Rs. 100 Cr, the promoters shall bring in Rs. 100 Cr. before the opening of the issue and the remaining contribution shall be brought in by the promoters in advance on pro-rata basis before the calls are made on public.

***Lock-in-Period for Promoter's Contributions;***

The promoter's minimum contribution (i.e. 20%) shall be locked-in for of 3 yrs. from the date of commencement of commercial production or the date of allotment in the public issue, whichever is later.

The excess promoters' contribution over the required minimum contribution shall be locked-in for a period of 1 year from the date of commencement of commercial production or the date of allotment in the public issue, whichever is later.

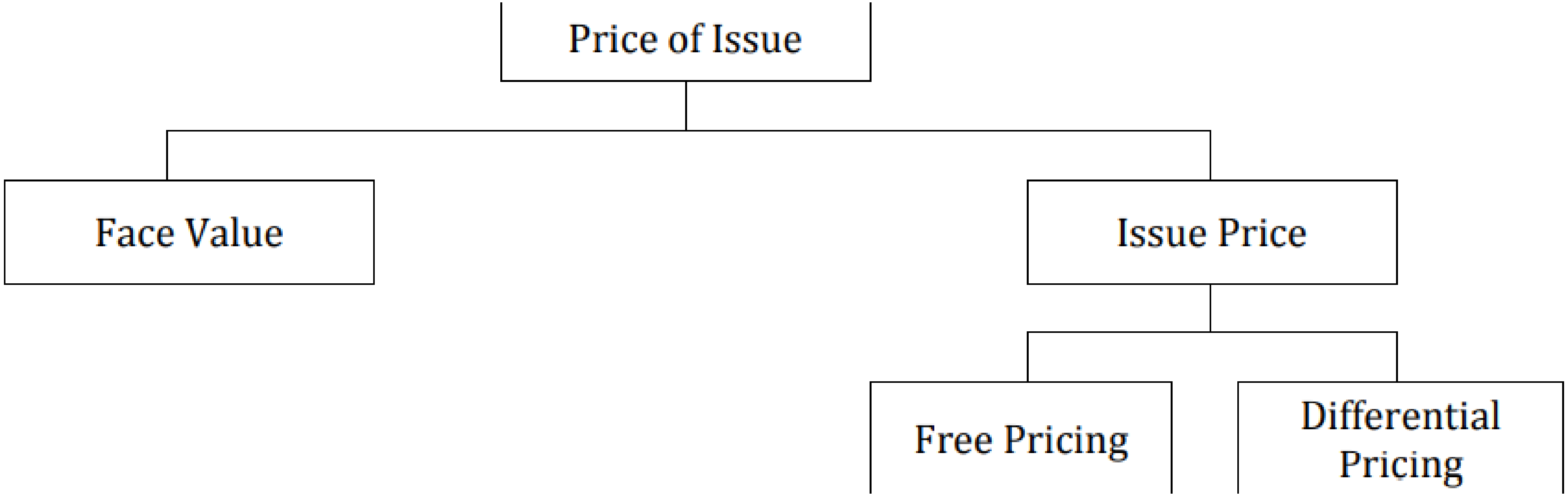
Exemption from Lock-in:

i. **Transfer to Stabilizing Agent:** Promoter's securities lent to Stabilizing Agent under Green Shoe Option.

ii. **Transfer of Shares amongst Promoters/Promoters Group:** During the period of lock-in, promoters can transfer their shares amongst the promoter/promoters group or to a new promoter or person in control of the Company subject to the continuation of lock-in the hands of transferee for remaining period.

iii. **Pledging of Securities:** Pledging of securities during lock-in period is allowed with Banks or FI as collateral securities for sanction of loan.

## Pricing


Price of Issue
Face Value
Issue Price
Free Pricing
Differential Pricing

## Face Value:

An issuer company is free to decide the denomination of each equity share for any initial public offer. The disclosure about the face value of equity shares shall be made in the draft offer document, offer document, advertisements and application forms, along with the price band or the issue price.

Issue Price-

Free Pricing

A company may freely price its public issue of equity shares in consultation with lead merchant banker.. Issue price should not be less than face value (Sec 53 of co. Act 2013).

There are 2 types of price:

- Fixed Price, and
- Price Band

In case of fixed price, the company has to file prospectus with the ROC before opening of the issue. In case the company is opting for price band, then such company has to file RHP with the ROC before opening of issue.

Differential Pricing:

An issuer company can offer securities subject to the following provisions:

i. It will only be offered to RII/employees.

ii. The value for making such application shall not be more than Rs. 2 Lakhs.

**Note:**

1. ‘RII’ means an investor who applies or bids for securities of or for a value of not more than Rs. 2,00,000.

2. ‘Employee’ means a permanent employee, working in India or outside India, of the issuer or of the promoters or subsidiary company of the issuer, or a director of the issuer, whether whole-time or not and does not include –

a) Promoters;

b) A person belonging to the promoter group;

or c) A director who either himself/herself or through their relatives or through any body corporate, directly or indirectly, holds more than 10% of the outstanding equity shares of the issuer.

iii. The difference shall not be more than 10% of the price at which specified securities are offered to other categories of applicants.

iv. If the issuer company opts for alternate method of book building, the issuer company can offer securities to its employees at a price, lower than floor price and the difference between such price and floor price shall not be more than 10%.

## Allocation in net offer to Public:

An issue made via the book building process u/r 6(1), then the allocation in the net offer to public category shall be as follows

a) Not less than 35% to RII;

b) Not less than 15% to non-institutional investors;

c) not more than 50% to QIB, 5% of which shall be allocated to MF.

## Special Note:

1. The unsubscribed portion in (a) or (b) may be allocated to applicants in the other category.

2. MF shall be eligible for allocation under the balance available for QIB, in addition to 5% allocation in (c).

3. An issue made via the book building process u/r 6(2), then allocation in the net offer to public category shall be as follows: -

a) not more than 10% to RII;

b) not more than 15% to non-institutional investors;

c) not less than 75% to QIB, 5% of which shall be allocated to MF.

1. In an issue made through the book building process, the issuer may allocate up to 60% of the portion available for allocation to QIB to anchor investor.

2. An issue made other than the book building process, allocation in the net offer to public category shall be made as follows: a) Minimum 50% to RII; and b) Remaining to:

- ✓Individual applicants other than RII, and
- ✓Other investors including corporate bodies or institutions, irrespective of the number of specified securities applied for.

Note: The unsubscribed portion in either of the categories specified above may be allocated to applicants in the other category.

Special Note, “institutional investor” means

i. QIB; or

ii. family trust or intermediaries registered with the SEBI, With net worth of more than Rs. 50 Cr. as per the last audited financial statements, for the purposes of listing and/or trading on institutional trading platform.

Underwriting-

Underwriting means an agreement with the underwriters to subscribe to the securities of a company when the total subscription from all the subscribers does not match the minimum subscription (i.e. 90% of the issue).

In this regard, the important provisions are:

a) The issuer company shall appoint one or more underwriters. \

b) Where the issuer company makes a public issue through the book building process, such issue shall be underwritten by lead managers or syndicate members.

c) 75% of the net offer to public proposed to be compulsorily allotted to QIBs cannot be underwritten.

d) The issuer shall enter into underwriting agreement with lead managers, who in turn shall enter into underwriting agreement with syndicate members, indicating therein the number of specified securities which they shall subscribe to at pre-determined price in event of under subscription.

e) If syndicate members fail to fulfill their underwriting obligations, the lead managers shall fulfill the underwriting obligations.

f) The lead manager and syndicate members shall not subscribe to the issue in any manner except for fulfilling their underwriting obligations.

g) In case of every underwritten issue, the lead merchant banker or the lead manager shall undertake minimum underwriting obligations.

## Opening of the Issue-

An IPO may be opened **within 12 months** from the date of issuance of the observation letter by SEBI.

In case of book building process, an issue shall be opened after **at least 3 working days** from the date of registering the RHP, in case of a fixed price issue, with the ROC.

## Minimum Subscription-

In respect of a public issue of securities, the minimum subscription to be received should not be less than 90% of the offer. In the event of non-receipt of minimum subscription all application monies shall be refunded **within 15 days** from the closure of the issue.

**Period for Subscription;**

A public issue must be kept open for **at least 3 working days but not more than 10 working days** including the days for which the issue is kept open in case of revision in price band.

In case the price band in a public issue made through the book building process is revised, the bidding (issue) period disclosed in the RHP should be extended for a minimum period of 3 working days. However, the total bidding period should not exceed 10 working days. Rights issue should be kept open for a **minimum 15 days and for a maximum 30 days.**

## Minimum Number of Share Applications and Application Money;

The minimum application money varies from issue to issue within the range of **Rs. 10,000 to Rs. 15,000.** The 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.

Assuming an issue is being made at a price of Rs. 1000 per equity share. In this case, the issuer in consultation with the lead merchant banker can determine the minimum application lot within the range of 10-15 equity shares (in value terms between Rs. 10,000-15,000). The minimum application moneys to be paid by an applicant at the time of application shall not be less than **25% of the issue price**.

**Basis for Allotment;**

As the SEBI Regulations, the ED/MD of the DSE along with Lead Merchant Banker and the RTA shall be responsible to finalize the basis of allotment in a fair and proper manner. The issuer shall not make an allotment pursuant to a public issue if the number of prospective allottees is less than 1000. Over-subscription:

In **case of over-subscription**, an allotment of **up-to 1% of the net offer to public** may be made for the purpose of making allotment in minimum lots.

Allotment, refund and payment of interest The issuer and lead manager(s) shall ensure that:

- The specified securities are allotted.
- Application monies are refunded or unblocked within specified period.
- Credit of dematerialized securities and refund or unblocking of application monies.
- Payment of interest at the rate of 15% p.a. if refund not done within specified time.

## Post-Issue Advertisements-

After completion of issue, the Lead Manager is required to advertise all information relating to

- oversubscription,
- basis of allotment,
- number, value and percentage of applications,
- number, value and percentage of successful allottees,
- date of completion of dispatch of refund orders or
- instructions to self-certified syndicate banks by the Registrar,
- date of dispatch of certificates and
- date of filing of listing application is released within 10 days from the date of completion of the various issue related activities.

The above information should be advertised at least in:

i. An English National Daily with wide circulation,

ii. One Hindi National Paper, and

iii. A Regional language daily circulated at the place where R.O of the issuer company is situated.

## Restriction on further capital issue;

An issuer shall not make any further capital issue whether by way of public issue, rights issue, preferential issue, qualified institutions placement, issue of bonus shares or otherwise during the period between the date of filing the draft offer document and the listing of the specified securities offered through the offer document or refund of application monies.

## RIGHT ISSUE

When a listed company offers or issues securities to the existing shareholders on a particular date fixed by the issuer company (i.e. record date), it is called a rights issue. The rights issue is always issued at price not like bonus shares, which are issued for free.

## Applicability of Regulations

If an issuer makes a right issue of securities where the aggregate value of securities is Rs. 10 Cr. or more then it is required to satisfy the conditions of this Chapter.

## Ineligibility

Same as Normal IPO/FPO

General Conditions:

- Application to Stock Exchange: An issuer company shall make application for in principle approval to one or more SE after choosing one of them as a DSE.
- Partly Paid-up Shares shall either been fully paid-up or have been forfeited.
- Appointment of Lead Merchant Banker, Intermediaries and Compliance Officer:
- Filing of Draft Letter of Offer: with SEBI and proposed SE, through a Lead Manager.
- Draft Letter of Offer should also be available to Public for comments

## Record Date-

The issuer shall announce a record date for the purpose of determining the shareholders who are eligible to apply for right issue. Once the record date is announced, the issuer shall not withdraw the issue otherwise it will not be eligible to make an application for listing of any of its specified securities on any SE for a period of 12 months from the record date announced.

## Pricing

The issuer shall decide the issue price, in consultation with the lead managers and designated stock exchanges before the record date and the same shall be disclosed in letter of offer filed with the Board and the stock exchange.

## Opening of the Issue

The right issue may be opened within 12 months from the date of issuance of the observation letter by SEBI. In case of a fast track issue, the issue shall open within 12 months from the record date.

## Minimum Subscription;

In respect of a public issue of securities, the minimum subscription to be received should not be less than 90% of the offer. In the event of non-receipt of minimum subscription all application monies received shall be refunded within 15 days from the closure of the issue.

**Period of Subscription**

Rights issue should be kept open for a minimum period of 15 days and for a maximum period of 30 days.

**Payment of Money-**

Issue shall give following payment options to the shareholders:-

- Part payment on application with balance money to be paid in calls; or
- Full payment on application. The minimum application moneys to be paid by an applicant at the time of application shall not be less than 25% of the issue price.

**Basis for Allotment:**

As the SEBI Regulations, the Executive Director/Managing Director of the DSE along with Lead MB and the RTA shall be responsible to finalize the basis of allotment in a fair and proper manner.

**Allotment, refund and payment of interest-**

The issuer and lead manager(s) shall ensure that:

- ✓ The specified securities are allotted.
- ✓ Application monies are refunded or unblocked within such period as may be specified by the SEBI.
- ✓ Credit of dematerialized securities and refund or unblocking of application monies, as may be applicable, are done electronically.
- ✓ Payment of interest at the rate of 15% per annum if refund not done within specified time.

**Post-issue Advertisements;**

After completion of issue, the Lead Manager is required to advertise all information relating to oversubscription, basis of allotment, number, value and percentage of applications, number, value and percentage of successful allottees, date of completion of dispatch of refund orders or instructions to self certified syndicate banks by the ROC, date of dispatch of certificates and date of filing of listing application is released within 10 days from the date of completion of the various issue related activities.

**The above information should be advertised at least in**:

i. An English National Daily with wide circulation,

ii. One Hindi National Paper, and

iii. A Regional language daily circulated at the place where registered office of the issuer company is situated.

## Restriction on Further Issue of Capital

An issuer shall not make any further capital issue whether by way of public issue, rights issue, preferential issue, qualified institutions placement, issue of bonus shares or otherwise during the following period –

| | |
|---|---|
| **In case of Fast Track Issue** | Between the date of filing the letter of offer and the listing of the specified securities offered through the offer document or refund of application monies. |
| **In case of other Issue** | Between the date of filing the draft letter of offer and the listing of the specified securities offered through the offer document or refund of application monies. |

# Fast Track Right Issue

This concept was introduced for the purpose to access primary market in lesser time. “Fast Track Issues" enable well established and law compliant listed companies to access Indian primary market in a time effective manner. A Listed Company has to satisfy terms & conditions for accessing primary market under Fast Track Issues scheme.

# FURTHER PUBLIC OFFER

**Eligibility**

A listed company may make a public issue of equity shares or any other security which may be converted into or exchanged with equity shares at a later date, only if it meets all following condition:

In case of change of name of the company within the last one year, at least 50% of the revenue for the preceding 1 full year is being earned by the company from the activity suggested by the new name.

**Note**: If a company does not satisfy the above conditions it can bring a FPO only if it is made through the book-building process and the issuer undertakes to allot, at least 75% 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 QIB

**Note**: If a company has any outstanding convertibles through an earlier public issue where the conversion price/tenure was disclosed, this condition will not be applicable.

Ineligibility

Same as IPO

General Conditions

- Appointment of Lead Merchant Banker, Intermediaries and Compliance Officer:

Same as IPO

- Filing of Offer Document:

Same as IPO

- Draft offer Document should also be available to Public for comments:

Same as IPO

- Application to Stock Exchange:

Same as IPO

- Issue of Securities in Dematerialised Form:

Same as IPO

- Partly Paid-up Shares: All the existing partly paid-up shares must be made fully paid or forfeited.

Minimum Promoter Contribution:

Promoters of the listed entity should contribute in accordance with the following provisions in case of FPO:

| Type of Issue | Promoter's Contribution |
|---|---|
| FPO other than composite issue | To the extent of 20% of the proposed issue **OR** 20% of the post-issue capital. |
| Composite Issue | 20% of the proposed public issue **OR** 20% of the post-issue capital. |

Composite issue

Any 2 types of issue of securities at the same time by the issuer company like rights cum-preferential-issue of shares.

**Exemption from Requirement of Promoter's Contribution:**

a) In case of companies where no identifiable promoter or promoter group exists.

b) The issuer company's shares are frequently traded in a recognized stock exchange for a period of at least 3 years. AND

c) Issuer company has track record of dividend payment for at least immediately preceding 3 years.

## Lock-in Period for Promoter's Contributions:

The provisions for Lock-in of promoters contribution in case of FPO is same as in case of IPO, discussed previously in this chapter.

Pricing

Face Value Same as IPO Issue Price

- Free Pricing Same as IPO
- Differential Pricing Same as IPO

Important points related to Price & Price Band

i. The issuer company can mention a price 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.

ii. The prospectus registered with the Registrar of Companies should contain only one price.

iii. If the floor price or price band is not mentioned in the red herring prospectus, the issuer company should announce the floor price or price band in all the newspapers in which the pre-issue advertisement was released, at least 1 working day before the opening of the bid (In case of IPO it was 2 days).

iv. The announcement should contain relevant financial ratios computed for both upper and lower end of the price band and also a statement drawing attention of the investors to the section titled basis of issue price in the prospectus.

v. The cap on the price band shall be less than or equal to 120 % of the floor price.

vi. The floor price or the final price should not be less than the face value of the securities.

- ✓Allocation in net offer to Public – Same as in case of IPO, discussed earlier in this chapter.
- ✓Underwriting - Same as in case of IPO, discussed earlier in this chapter. Opening of the Issue - Same as in case of IPO, discussed earlier in this chapter.
- ✓Minimum Subscription - Same as in case of IPO, discussed earlier in this chapter. Period of Subscription - Same as in case of IPO, discussed earlier in this chapter.
- ✓ Minimum Number of Share Applications and Application Money - Same as in case of IPO, discussed earlier in this chapter.
- ✓Basis of Allotment - Same as in case of IPO, discussed earlier in this chapter.
- ✓ Allotment, refund and payment of interest- Same as in case of IPO, discussed earlier in this chapter.
- ✓ Post-issue Advertisements - Same as in case of IPO, discussed earlier in this chapter.

An issuer shall not make any further capital issue whether by way of public issue, rights issue, preferential issue, qualified institutions placement, issue of bonus shares or otherwise during the following period –

| | |
|---|---|
| In case of Fast Track Issue | Between the date of filing the offer document (in case of book building) and prospectus (in case of fixed price method) and the listing of the specified securities or refund of application monies. |
| In case of other Issue | Between the date of filing the draft offer document and the listing of the specified securities offered through the offer document or refund of application monies. |

# Fast Track FPO

This concept was introduced for the purpose to access primary market in lesser time. "Fast Track Issues" enable well established and law compliant listed companies to access Indian primary market in a time effective manner. A Listed Company has to satisfy terms & conditions for accessing primary market under Fast Track Issues scheme.

*The aforesaid companies are not required to file draft offer document with SEBI and SE.*


# DUE DILIGENDE

Due Diligence means a process through which merchant banker evaluates the risk involved in any transactions like merger, acquisition & public issue of securities. Due Diligence may be of different types like:

a) Accounting Due Diligence

b) Legal Due Diligence

c) Environmental Due Diligence

d) Human resources Due Diligence

The standard of due diligence shall be such that merchant banker shall satisfy himself about all aspects of offering, veracity (truth) and adequacy of disclosure in offer document. Lead manager who is responsible for preparation of the offer documents is required to submit to SEBI draft prospectus complete in all respects along with the Due Diligence Certificate, inter se allocation of Responsibilities Certificate and a copy of Memorandum of Understanding.

# In addition to the due diligence certificate to be furnished along with the draft prospectus, lead managers are also required to:

- Certify that all the amendments suggested/observations made by SEBI have been given effect to in the prospectus,
- Furnish a fresh due diligence certificate at the time of filing the prospectus with the ROC,
- furnish a fresh certificate immediately before the opening of the issue that no corrective action is needed, and
- furnish a fresh and final compliance certificate before the issue is dosed for subscription.