

Following are Important 'ICDR' from Chapter 16 SEBI**(A) Fast Track Issue**

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 3 years immediately preceding the reference date;
 - (b) the average market capitalisation of public shareholding of the issuer is at least ₹ 3,000 crore;
 - (c) the annualised trading turnover of the equity shares of the issuer during 6 calendar months immediately preceding the month of the reference date has been at least 2% of the weighted average number of equity shares listed during such 6 months' period:
Provided that for issuers, whose public shareholding is less than 15% of its issued equity capital the annualised trading turnover of its equity shares has been at least 2% of the weighted average number of equity shares available as free float during such 6 months' period;
 - (d) the issuer has redressed at least 95% of the complaints received from the investors till the end of the quarter immediately preceding the month of the reference date;
 - (e) the issuer has been in compliance with the equity listing agreement for a period of at least 3 years immediately preceding the reference date.
 - (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
 - (g) no show-cause notices have been issued or prosecution proceedings initiated by the Board pending against the issuer or its promoters or whole time directors as on the reference date;
 - (h) the entire shareholding of the promoter group of the issuer is held in dematerialized form on the reference date.
2. The issuer shall file the offer document with the Board and the recognised stock exchanges in accordance with sub-regulations 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
 - (b) in case of a fast track issue of convertible debt instruments, a due diligence certificate from the debenture trustee.

(B) Additional requirements for issue of convertible debt instruments.

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.

(C) Conditions for initial public offer.

1. An issuer may make an initial public offer, if:
 - (a) it has net tangible assets of at least Rs. 3 crore in each of the preceding 3 full years (of 12 months each), of which not more than 50% are held in monetary assets:

Provided that if more than 50% 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 50% 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 15 crore, calculated on a restated and consolidated basis, during the 3 most profitable years out of the immediately preceding 5 years. Provided that extraordinary items shall not be considered for calculating distributable profits:

Provided further that an issuer who had subsidiary / subsidiaries for a period lesser than 5 years, shall have net profits on a consolidated basis in at least 1 year for which consolidated accounts are prepared;

- (c) it has a net worth of at least ` 1 crore in each of the preceding 3 full years (of 12 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 5 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 1 year, at least 50% of the revenue for the preceding 1 full year has been earned by it from the activity indicated by the new name.

2. 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.
3. An issuer shall not make an allotment pursuant to a public issue if the number of prospective allottees is less than 1,000.
4. 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.

(D) A to Z Ltd., an unlisted public company, eligible to make a public issue, desires to get its securities listed on Mumbai Stock exchange, pursuant to a public issue to be made shortly. The company seeks your advice in respect of the following:

- (i) Whether the company can freely price its equity shares, and
- (ii) Whether it can issue equity shares to those applicants in the firm allotment category at a price different from the price at which equity shares are offered to the public.

Advise, keeping in view the SEBI Guidelines in this regard. [CA (Final) May 2010]

Ans. Pricing by companies issuing securities are contained in Regulations 28 to 31 consisting of Part II of Chapter III of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009. The relevant part of these Regulations is explained below:

Pricing.

- (1) An issuer may determine the price of specified securities in consultation with the lead merchant banker through the book building process.
- (2) An issuer may determine the coupon rate and conversion price of convertible debt instrument 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 XI.

Differential pricing.

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

- (a) retail individual investors or retail individual shareholders or employees entitled for reservation made for specified securities of value not more than Rs. 2 lakhs 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 10% 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 10% of the floor price.

Price and price band.

- (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 5 working days before the opening of the bid (in case of an initial public offer) and at least 1 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) ...
- (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 pre-filled 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 100 and 20% 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.

- (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 Rs. 500 or more, the issuer shall have the option to determine the face value at less than Rs. 10 per equity share:
Provided that the face value shall not be less than Re. 1 per equity share;
 - (b) if the issue price per equity share is less than Rs. 500, the face value of the equity shares shall be Rs. 10 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.

(E) SEBI Regulations on lock-in of promoters contribution (Regulations 35 to 40)

Explain the SEBI Regulations regarding restrictions of transferability (lock in) of promoters' contribution.

Ans. Regulations on lock-in of promoters' contribution are contained in Regulations 35 to 40 consisting of Part IV of Chapter III of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009. The relevant part of these Regulations is explained below:

Date of commencement of lock in and inscription of non-transferability.

- (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 3 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.

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 3 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 1 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.

(F) SEBI Regulations on rights issue (Regulations 52 to 56)

Explain the regulations made by SEBI relating to rights issue.

Ans. Regulations relating to rights issue are contained in Regulations 52 to 56, consisting of Chapter VII of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009. The relevant part of these Regulations is explained below:

Record Date.

- (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 12 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.

- (1) No issuer shall make a rights issue of equity shares, unless it has made reservation of equity shares of the same class in favour of the holders of outstanding compulsorily convertible debt instruments, if any, in proportion to the convertible part thereof.
- (2) The equity shares 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 at which the equity shares offered in the rights issue were issued.

Letter of offer, abridged letter of offer, pricing and period of subscription.

- (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 3 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.

(G) Conditions for preferential issue(REGULATIONS FOR PREFERENTIAL ISSUE)

- (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 6 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.
- (3) Where any person belonging to promoters) 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 1 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.

(H) SEBI Regulations for bonus issues (Regulations 90 to 95)

State the SEBI Regulations for issue of bonus shares.

Ans. Regulations relating to bonus issues are contained in Regulations 92 to 95, consisting of Chapter IX of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009.

The relevant part of these Regulations is explained below:

Conditions for bonus issue.

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 associations 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.

- (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 outstanding compulsorily convertible debt instruments, 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 at which the bonus shares were issued.

Bonus shares only against reserves, etc. if capitalised in cash.

- (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.