SEBI (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2009
[Previously SEBI (Disclosure and Investors Protection) Guidelines 2000]

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PUBLIC OFFER- offering shares to public for subscription by issue of "prospectus"

Sec. 67 (3) of the Companies Act, 1956 states **what is not a "public offer"**:

- Offer not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or
- otherwise as being a *domestic concern* of the persons making and receiving the offer or invitation:
    - Offer made is made to less than 50 persons;
    - Each offer is made to a particular addressee and may only be accepted by the addressee;
    - Each addressee who takes up an offer warrants that he is acquiring the securities for his own account for long-term investment purposes and not with a view to resale;
    - The offer is not associated (either immediately or fairly soon after the issue) with an application for listing on the Stock Exchange or for some other facility for trading the securities offered.

Applicability

- Issue of equity shares
- Issue of preference shares
- Issue of convertible debt securities

Types of Issue

- Public Issue (by Prospectus)
- Rights Issue where the aggregate value of the specified securities offered is Rs. 50 lakhs or more (by Letter of Offer)
- Bonus Issue
- Private Placement
    - preferential allotment (no separate offer letter required)
    - qualified institutional placement (placement document)
- Issue of Indian Depository Receipt

Classification of Issues based on subscribers:

- All members of public
    - Public issue
        - Initial Public Offer

        - Follow-on public offer
- Existing shareholders
    - Rights Issue
    - Bonus Issue
- Select group of persons
    - preferential allotment
    - qualified institutional placement

Mechanism for issue:
- Fixed Price Issue (through prospectus)
- competitive bidding called book building process (through red herring prospectus, which is finalized into a prospectus after the issue closes)

Prohibited Parties for public issue:
- Issuer/ any of its promoters/ promoter group/ directors/ persons in control of the issuer are debarred from accessing the capital market by the SEBI;
- Any of the promoters/ directors/ or persons in control of the issuer who was or also is a promoter/ director/ person in control of any other company which is debarred from accessing the capital market under any order or directions made by the SEBI;
- Issuer of convertible debt instruments who is in the list of willful defaulters published by the RBI 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 6 months;

Broad compliances required to be made for making public offer:
- Application to one or more recognised stock exchanges for listing of specified securities on such stock exchanges and chosing one of them as the designated stock exchange:
- In case of an IPO, the issuer shall make an application for listing of the specified securities in at least one recognised stock exchange having nationwide trading terminals;
- To enter into an agreement with a Depository for dematerialisation of specified securities already issued or proposed to be issued;
- All existing partly paid-up equity shares of the issuer have either been fully paid up or forfeited;

Other compliances:
- Appointment of Intermediaries
    - **Merchant Banker** (MB) - Issuer required to appoint one or more MB, at least one of whom shall be a lead MB
    - Other intermediaries. (to be appointed in consultation with the lead MB)
        - In case of an issue made through the book building process, appoint **Syndicate Members**
        - In the case of any other issue, appoint **Bankers to Issue**, at all mandatory collection centres

- Appoint a **Registrar** which has connectivity with all the depositories

PROCEDURE FOR MAKING PUBLIC ISSUE OF SHARES:

(a) **Filing of offer document:** Before making a public issue or rights issue, file a draft offer document, along with specified fees with the SEBI through the lead MB, at least 30 days prior to registering the prospectus/ red herring prospectus/ shelf prospectus with the ROC

(b) SEBI may specify changes or issue observations, which is required to be complied with by the Issuer and the MB.

(c) Issuer shall now register the prospectus with the ROC

(d) Simultaneously, Issuer shall file a copy thereof with the SEBI through the lead MB.

(e) **Obtain In-principle Approval:** The issuer shall obtain in-principle approval from recognised stock exchanges as follows:
   a. in case of an IPO, from all the recognised stock exchanges where the issuer proposes to get its specified securities listed; and
   b. in case of a FPO and rights issue:
      i. where the specified securities are listed only on recognised stock exchanges having nationwide trading terminals, from all such stock exchanges;
      ii. where the specified securities are not listed on any recognised 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 recognised stock exchanges having nationwide trading terminals as well as on the recognised stock exchanges not having nationwide trading terminals, from all recognised stock exchanges having nationwide trading terminals.

(f) **Submission of documents:** The lead MB shall submit the following to the SEBI along with the draft offer document**:**
   a. a copy of the agreement entered into between the issuer and the lead MB;
   b. a copy of inter-se allocation of responsibilities of each MB, in case the issue is managed by more than one MB;
   c. a due diligence certificate as per specified format;
   d. in case of an issue of convertible debt instruments, a due diligence certificate from the debenture trustee as per specified format;
   e. a certificate of compliance in the specified format

(g) At the time of filing draft offer document with the recognised stock exchange where the specified securities are proposed to be listed, the Issuer shall submit the PAN, bank account number and passport number of its promoters to such stock exchange.

(h) **Draft offer document to be made public:** The draft offer document filed with the SEBI shall be made public, for comments, if any, for a period of at least 21 days from the date of such filing, by hosting it on the websites of the following:

   a. SEBI,
   b. recognised stock exchanges where specified securities are proposed to be listed and
   c. MB associated with the issue.

(i) After expiry of the period of 21 days, the lead MB shall file with the SEBI, a statement giving information of the comments received by them and the consequential changes, if any, to be made in the draft offer document.

(j) **Opening of an issue:** The issue may be opened within

   a. within 12 months from the date of issuance of the observations by the SEBI; or
   b. within three months of expiry of the stipulated period, if the Board has not issued observations:

(k) **Dispatch of issue material:** The lead MB shall dispatch the offer document and other issue material including forms for ASBA to the designated stock exchange, syndicate members, underwriters, bankers to the issue, investors' associations and Self Certified Syndicate Banks in advance.

(l) **Underwriting:**

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

(m) **Minimum subscription:**

   a. The minimum subscription to be received in an issue shall not be less than 90 % of the offer through offer document.
   b. In the event of non-receipt of minimum subscription, all application moneys received shall be refunded to the applicants forthwith, but not later than:
      i. 15 days of the closure of the issue, in case of a non-underwritten issue; and
      ii. 70 days of the closure of the issue, in the case of an underwritten issue

(n) **Oversubscription:** No allotment shall be made by the issuer in excess of the specified securities offered through the offer document:

(o) **Manner of calls:** Where the issuer proposes to receive subscription monies in calls, it shall ensure that the outstanding subscription money is called within 12 months from the date of allotment and on failure of payment of 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:

(p) **Allotment** to be completed within fifteen days from the date of closure of the issue.

(q) **No further capital issues can be made** 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.

Additional requirements for issue of convertible debt instruments.

(a) Issuer 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 SEBI (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.

Eligibility conditions for making public issue

Conditions for IPO: (all conditions listed below to be satisfied)

- Net tangible assets of 3 crores in each of the preceding 3 full years, of which not more than 50% are held in monetary assets:
- Track record of distributable profits for 3 out of the immediately preceding 5 years
- Net worth of at least 1 crore in each of the preceding three full years;
- Issue size of proposed issue + all previous issues made in the same financial year does not exceed 5 times its pre-issue net worth as per the audited balance sheet of the preceding financial year;
- In case of change of name within the last one year, 50% of the revenue for the preceding 1 full year earned by it from the activity indicated by the new name.

If the issuer does not satisfy any of the condition listed above, issuer may still make IPO by satisfying the following:

1.	Issue through book building subject to allotment of 50% of net offer to public to QIB failing which full subscription monies to be refunded	OR	• 15% of the cost of the project to be contributed by SCB or PFI of which not less than 10% from the appraisers + • allotment of 10% of the net offer to public to QIB failing which full subscription monies to be refunded
		AND	
2.	Minimum post-issue face value capital of the issuer is 10 crores	OR	Issuer to provide market-making for 2 yrs from the date of listing of the specified securities

Pricing
An issuer may determine the price of specified securities in consultation with the lead merchant banker or through the book building process.

Face value of equity shares.
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. However, the face value shall not be less than one rupee 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:

- **Promoters' contribution**:
  - Cannot be less than 20% of the post issue capital
  - Maximum not defined, but in view of the required minimum public offer as per Rule 19 (2) (b) of Securities Contracts Regulations, promoters contribution plus any firm allotments cannot exceed 90% or 75% of the issue size as the case may be (see below).

- **Minimum Public offer:** By public offer is meant the securities being offered to public by advertisement, exclusive of promoters' contribution and firm allotments.
  - Rule 19(2)(b) of the Securities Contracts (Regulations) Rules, 1957 requires that the minimum public offer should be 25% of total issued securities should be offered to public through advertisement.
  - However, a lower public offer of 10% is allowed if the following conditions are satisfied:
    - The minimum public offer is Rs 100 crores ,and the number of securities being offered to public is at least 20 lakh securities.
    - The offer is made through mandatory book-building route, with minimum allocation of 60% to QIBs.