India

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Statutes and regulations

1 What are the relevant statutes and regulations governing securities offerings? Which regulatory authority is primarily responsible for the administration of those rules?

Statutes

Securities offerings in India are primarily governed by the following statutes, together with rules, regulations and guidelines made under these statutes:

- the Securities Contract (Regulation) Act 1956 (the Securities Act), designed to keep a tight vigil over all stock exchanges in India;
- the Securities and Exchange Board of India Act 1992 (the SEBI Act), which establishes a board, the Securities and Exchange Board of India (SEBI), to protect the interests of investors in securities, and to regulate and promote the development of the securities market in India;
- the Depositories Act 1996 (the Depositories Act), designed to pave a smooth and free transfer of securities by encouraging an electronic-based ownership of shares instead of the traditional paper-based ownership;
- the Companies Act 1956 (the Companies Act), which also provides various requirements that need to be met by companies that wish to access the securities market. These requirements are usually cross referenced in regulations issued by SEBI; and
- the Foreign Exchange Management Act 1999 (FEMA), which provides the legal framework for administration of foreign exchange in India with the objective of facilitating external trade and payments. FEMA applies to offerings or financing of securities that have an international element.

The main guidelines issued by SEBI concerning offerings are the SEBI (Disclosure and Investor Protection) Guidelines, 2000 (the Investor Guidelines) which provide a comprehensive regulatory framework including eligibility norms, and various filing and disclosure requirements.

The government of India has a Foreign Direct Investment (FDI) Policy which provides the various procedures involved in the purchase of securities by persons and entities outside India within prescribed sectors and caps. The FDI Policy has been notified by the Reserve Bank of India (the RBI), India's central bank.

In addition, the SEBI (Foreign Institutional Investors) Regulations, 1995 were adopted to allow foreign institutional investors to make portfolio investments in India. Foreign institutional investors are institutions organised outside India that, upon registration by SEBI, can make investments in the Indian securities markets.

Regulatory authority

While the government of India continues to play a role in overseeing the enforcement of the provisions of the Securities Act, SEBI is the primary body in charge of administering the Securities Act, the SEBI Act, and issuing rules, regulations, guidelines, and circulars, to enforce the provisions of these statues.

The SEBI Act provides SEBI with wide discretionary powers and functions including:

- regulating the business of stock exchanges;
- registering and regulating the working of stockbrokers, subbrokers, and share transfer agents;
- registering and regulating the working of custodian of securities, foreign investors, credit rating agencies, venture capital funds and collective investment schemes, including mutual funds;
- prohibiting fraudulent and unfair trade practices relating to securities markets, and insider trading in securities;
- regulating substantial acquisitions of shares and takeovers of companies; and
- specifying any regulations relating to issue of capital, transfer of securities and various incidental matters.

In addition to SEBI, the Capital Markets Division of the Ministry of Finance and the RBI provide policy direction for the development of the securities market.

Public offerings

2 What regulatory or stock exchange filings must be made in connection with a public offering of securities? What information must be included in such filings or made available to potential investors? Please distinguish between debt and equity, and primary and secondary offerings where relevant.

Unless exempt, all companies that wish to access the primary market must meet the eligibility requirements under the Investor Guidelines. To provide sufficient flexibility, SEBI has provided two routes under which an issuer can be eligible to access the primary market.

Entry route I

- The issuer has net tangible assets of at least 30 million Indian rupees in each of the preceding three years, of which no more than 50 per cent are held in monetary assets;
- the issuer has a track record of distributable profits for at least three out of the preceding five years;
- the issuer has a net worth of at least 10 million Indian rupees in each of the preceding three years;
- in case of a name change, at least 50 per cent of the issuer's

revenue for the last year should have been earned from the activity suggested by the new name; and
- the size of the proposed offering does not exceed five times its pre-issue net worth (based on the audited balance sheet of the last financial year).

Entry route II
- A book-building process (with either a floor price or a price band, where subscription is through an auction), with at least 50 per cent of the net offer to be allotted to qualified institutional buyers (QIBs); or
- the project for which money is being raised has at least 15 per cent participation by financial institutions or scheduled commercial banks, of which at least 10 per cent comes from the appraiser(s) of the project; and
- the minimum post-offering face value capital of the issuer shall be 100 million Indian rupees; or
- there shall be mandatory market-making for at least two years from the date of listing the shares.

In addition to satisfying one of the above requirements, the issuer must have at least 1,000 prospective shareholders.

The eligibility requirements for companies that are already listed but wish to raise further equity capital are:
- that the size of the proposed offering and all previous offerings made in the same financial year does not exceed five times its pre-issue net worth (based on the audited balance sheet of the last financial year); and
- in case of a name change, at least 50 per cent of the issuer's revenue for the last one year should have been earned from the activity suggested by the new name.

The eligibility requirements will not apply to the following exempt entities or categories:
- private sector banks licensed by the RBI;
- public sector banks;
- an infrastructure company whose project has been appraised by certain institutions as identified in the Investor Guidelines, and not less than 5 per cent of the project cost is financed by these institutions; or
- a rights offerings by a listed issuer.

Every eligible issuer making a public offering is required to file with SEBI a draft offer document which contains:
- general information such as the name and registered office of the issuer, the proposed listing stock exchange(s), the proposed dates of opening and closing of the offering, and the name of the auditors of issuer;
- the risks associated with the offering as envisaged by the issuer and any proposals to address the risks;
- details of underwriting arrangement(s) and the underwriter(s);
- the capital structure of the issuer including authorised, issued and paid-up capital of the issuer;
- the object of the offering, such as for generating working capital or for asset creation;
- the basic terms of the proposed offering, including basis for price, rights associated with the offering, any special tax benefits, and how prospective shareholders can apply to obtain shares;
- details including present business, list of subsidiaries, details of directors, details of previous offerings by the issuer and details of other companies under the same management;
- financial information supported by reports from the auditors concerning the issuer and its subsidiaries, use of proposed proceeds from the offering, and principal terms of existing debt;
- outstanding litigation on matters likely to effect the operation and finances of the issuer, and details of any criminal prosecution against the issuer or any directors; and
- statutory and regulatory disclosures such as details of shareholders' resolution approving the offering, minimum subscription requirements, expenses associated with the offering such as commission and fees to underwriters and advisors, details of material contracts, and restrictions on foreign ownership, if any.

In addition, SEBI requires the lead manager (the LM) assisting the issuer (customarily, an investment banker) to submit a certificate summarising the LM's due diligence with an undertaking that the LM has adequately complied with all the requirements of the Investor Guidelines in its due diligence and preparation of the draft offer document.

The Investor Guidelines list various additional requirements when companies offer debt instruments, such as:
- a credit rating of not less than the investment grade obtained from at least two credit rating agencies registered with SEBI to be disclosed in the draft offer document along with all credit ratings obtained in the last three years;
- the appointment of a debenture trustee whose details must be included in the draft offer document;
- the draft offer document shall specify the assets on which security shall be created with all relevant consents;
- the creation of a debenture redemption reserve for redemption of the debentures;
- the issuer shall not be a wilful defaulter as notified by the RBI (wilful defaulters are entities who have not used bank funds for the purpose they were borrowed and not repaid loans despite having adequate liquidity to do so);
- the issuer is not in default of payment of interest or repayment of principal in respect of debentures issued to the public, if any, for a period of more than six months; and
- there must be at least 50 subscribers.

3 What are the steps of the registration and filing process? May an offering commence while regulatory review is in progress? How long does it typically take for the review process to be completed?

An offering cannot commence until the offer document is filed with the Registrar of Companies (the RoC), the statutory authority appointed under the Companies Act to register companies, and the relevant stock exchanges(s) (the SE(s)).

The draft offer document must be filed with SEBI for its observations at least 21 days prior to filing of the offer document with the RoC. SEBI issues press releases every week with its observations on the draft offer document, which are all available online for public review. SEBI's observations on the draft offer document will need to be incorporated into the offer document prior to the final filing. During this time investors can register any public grievances with the LM which must also be considered before filing the final offer document with the RoC and SE(s). In addition, an unlisted issuer is required to obtain an approval of the draft offer document from the SE(s), which also needs to be filed with SEBI prior to filing the final offer document.

Upon approval by SEBI, the final offer document is filed with the RoC and the SE(s). Within three days of filing the final offer document, a copy must be filed with SEBI which is made available on SEBI's website and at SEBI's office for public review. The Companies Act requires the issuer to accept applications for shares no later than: 90 days from registering the offer document with the RoC; three months from the date of issuance of observations by SEBI; or three months from the 22nd day from the date of filing of the draft offer document with SEBI, if no observations are issued.

Thus, the offer document is available for public review through the filing and approval process but the issuer cannot accept applications for shares until the final offer document is registered with the RoC.

4 What publicity restrictions apply to a public offering of securities? Are there any restrictions on the ability of the underwriters to issue research reports?

Publicity restrictions

The issuer is only permitted to notify the public of its proposal to make an offer and that it is in the process of filing a draft offer document with SEBI during the period commencing from the date of approval of the offering by the board of directors of the issuer till the date of filing the draft offer document with SEBI.

Immediately upon receiving final observations from SEBI, if any, the issuer must advertise the offering in three newspapers where the registered office of the issuer is located. Advertising of only facts and not projections, estimates or any information extraneous to the offer document is permitted and advertisements should not contain:

- exaggerated statements about the performance of the issuer;
- a statement that promises or guarantees rapid increase in the issuer's profits;
- any information that is not in the offer document;
- any models, celebrities, fictional characters, landmarks or caricatures;
- any financial data except if such data relates to the last three years; or
- any publicity material that is not reviewed and approved by the LM prior to distribution.

Research reports

The LM may issue research reports but it will need to ensure that all research reports are prepared on the basis of information contained in the final offer document and that the guidelines prescribed for advertisements be followed when publishing research reports.

5 Are there any special rules that differentiate between primary and secondary offerings? What are the liability issues for the seller of securities in a secondary offering?

Under section 81 of the Companies Act, an issuer must offer its existing shareholders pre-emptive rights to subscribe and pay for a proportionate number of shares to maintain their existing shareholding prior to the issuance of any new equity. This pre-emptive right can be waived by shareholders' resolution with the affirmative vote of holders of at least three-quarters of the issuer's shares.

Selling shareholders making a secondary public offering will make certain representations and be liable in a manner similar to that of an issuer. As such, they will need to follow all the relevant guidelines applicable to an offering by an issuer. In case of any non-compliance with the Investor Guidelines, SEBI has the discretion to direct:

- persons to refund any money collected from investors;
- persons not to access the capital market for a particular period;
- the SE(s) not to list or trade in the relevant securities; and
- any action it deems suitable and proper to protect the capital market and the interest of investors.

6 What is the typical settlement process for sales of securities in a public offering?

Applications will be accepted for a period of at least three working days and for not more than 10 working days. In the case of book-built offerings, bidding will be open for a minimum of three and a maximum of seven working days, which may be extended by three days in case the issuer revises the price band. This period is 21 working days if the issuer is an infrastructure company.

The allotment or dispatch of refund orders, in case of a non-subscription, are to be completed within two working days of finalising the basis of allotment. Companies are required to finalise the basis of allotment within 30 days from the closing of the offering in case of a fixed price offering, and within 15 days from the closing of a book-building offering to avoid paying interest.

Private placings

7 Are there specific rules for the private placing of securities? What procedures must be implemented to effect a valid private placing?

A private placement of shares by a listed issuer is generally known as a preferential allotment. The Investor Guidelines require that:

- the price of the preferential share must be based either on the higher of the averages over the preceding six months' or two weeks' closing prices of the related shares;
- allotment shall be completed within 15 days of approval by the issuer's board of directors unless regulatory approval is pending such as in the case of allotments to foreign investors where approval by the RBI is a pre-requisite;
- in case of preferential allotment of instruments that provide for conversion to equity shares at a future date, such conversion must take place within 18 months from the date of offering;
- in case of preferential allotment to founders, their relatives, associates and related entities, for consideration other than cash, a valuation of the assets forming the consideration must be submitted to all stock exchanges where the issuer is listed; and
- details of all proceeds realised from the preferential allotment must be disclosed in the issuer's balance sheet.

In addition, a 'qualified institutions placement' (QIP) is a private placement of equity shares by a listed issuer to QIBs (ie, public financial institutions, scheduled commercial banks, mutual funds, foreign institutional investors, multilateral and bilateral development financial institutions, venture capital funds, foreign venture capital investors, state industrial development corporations, insurance companies, and provident funds and pension funds with a minimum corpus of 250 million Indian rupees). The requirements include:

- at least 10 per cent of the specified securities shall be allotted to mutual funds, unless no mutual fund agrees to take up the minimum portion when offered;
- no allotment shall be made to relatives of the founders or to a QIB which is a founder of the issuer;

- the price of the preferential share must be based on the higher of the averages over the preceding six months' or two weeks' closing prices of the related shares;
- allotment shall be completed within 12 months of the resolution of the issuer's board of directors approving the offering; and
- in case of preferential allotment of instruments that provide for conversion at a future date, such conversion must take place within 60 months from the date of offering.

8 What information must be made available to potential investors in connection with a private placing of securities?

A private placement of shares that is not a QIP does not require a specific placement document. The offer and relevant information regarding the placement is included in the explanatory statement to the notice of the general meeting of the board of directors approving the offer, and must contain the object of the offer, the intentions of founders, directors or key management to subscribe to the offer, the standard shareholding pattern before and after the offer, the proposed time of the allotment, and the identity of the proposed allottees with the percentage of post-preferential capital that they will hold.

In the case of a QIP, the specified securities being offered must be through a placement document and contain all material information similar to a regular offer document. All the investors must be provided with a copy of the placement document which must also be displayed on the website of the concerned stock exchange with a disclaimer that the securities are being offered to QIBs and not to the public. In addition, the placement document must be filed with SEBI within 30 days of allotment of the securities.

9 Do restrictions apply to the transferability of securities acquired in a private placing? And are any mechanisms used to enhance the liquidity of securities sold in a private placing?

Specific lock-in periods where the shares cannot be disposed, range from six months to three years depending on the types of private investors (founders, for example) and types of securities (equity shares, or convertible instruments or warrants) being offered for private placement. These measures tend to reduce liquidity, rather than enhance it and are justified on the basis that these instruments have been issued on a 'preferential basis', often at a discount to current market price.

- Private placements to founders are subject to a lock-in period of three years.
- 20 per cent of the paid-up capital (post-issue) of the issuer shall be subject to a three-year lock-in.
- Shares acquired by placees prior to the placing are required to be locked in for six months and all instruments allotted on a preferential basis shall be locked in for a period of one year from the date of their allotment.
- In the case of shares acquired by conversion of convertible instruments or exercise of warrants, the lock-in period will be reduced to the extent the securities had already been locked in.
- No allottee of instruments offered on a preferential basis, can sell any portion of his pre preferential allotment for six months from the date of the preferential allotment.
- All persons who sell their shares in the issuer during the six-month period prior to a preferential offer will be ineligible for such preferential allotment.

QIBs are prevented from transferring securities acquired in a QIP for a period of one year, except through a recognised stock exchange.

Offshore offerings

10 What specific rules, if any, apply to offerings of securities outside the home jurisdiction made by an issuer in your jurisdiction?

Indian Companies have access to the global capital markets by offering foreign currency convertible bonds (FCCBs) or equity shares through global depository receipts (GDRs) and American depository receipts (ADRs). The main regulations governing FCCBs and GDRs or ADRs are:

- the Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004 issued under FEMA;
- the Master Circular on External Commercial Borrowings and Trade Credits issued by the RBI;
- the Master Circular on Foreign Investments in India issued by the RBI; and
- the Issue of Foreign Currency Convertible Bonds and Ordinary Shares (through the Depository Receipt Mechanism) Scheme, 1993 issued by the Ministry of Finance.

The common provisions relating to the offering of FCCBs and ADRs or GDRs are:

- FCCBs and ADRs or GDRs must adhere to all RBI guidelines on FDI (including sectoral caps and sectors where FDI is permissible);
- Indian companies which are not eligible to raise equity from the Indian capital market are not allowed to offer FCCBs or shares through the ADR or GDR route;
- unlisted companies issuing FCCBs, ADRs or GDRs are required to simultaneously list in the Indian market;
- the price of the FCCBs, ADRs or GDRs must be based on the higher of the averages over the preceding six months' or two weeks' closing prices of the related shares. However, for companies going public in the domestic and foreign markets simultaneously, or making an offering of FCCBs, ADRs or GDRs within 30 days of the domestic offering are exempt from the pricing requirement, provided they procure approval from SEBI. In addition, the offer prices in the case of a simultaneously domestic and foreign offering must be at par; and
- proceeds from FCCBs and ADRs or GDRs should remain overseas until an actual requirement for their use arises in India.

The following requirements are specific to the offering of FCCBs:

- Indian companies (except certain financial institutions) are eligible to raise an aggregate principal amount of up to US$500 million without prior approval from the RBI;
- the minimum average maturity should be three years for FCCBs up to US$20 million and five years for FCCBs between US$20 million and US$500 million;
- the proceeds from the offering of FCCBs are permitted to be utilised only for particular uses, including certain kinds of domestic investment, direct overseas investment in joint ventures and wholly-owned subsidiaries, permitted stages of acquisition of shares in the Indian Government's disinvestment process, for certain kinds of lending and financing, and for refinancing existing FCCBs; and
- in all cases, including offering of FCCBs beyond the aggregate

principal amount of US$500 million with the prior approval of the RBI, the proceeds can never be used for investment in the Indian capital market or acquiring a company in India, real estate, and as working capital including for the repayment of existing Indian rupee loans.

The following requirements are specific to the offering of ADRs or GDRs:

- no prior approval of SEBI is required for the offering of ADRs or GDRs if they are offered through a stock exchange that is registered or recognised by the appropriate regulatory authority in the country of the offering;
- there are no restrictions on the use of the proceeds from the offering except for investment in real estate or the stock market;
- a two-way substitution scheme is in place such that the ADRs or GDRs can be converted into underlying shares and vice versa, and reissuance is permitted to the extent of ADRs or GDRs that have been redeemed into underlying shares and sold in the Indian market; and
- an Indian company can sponsor an offering of ADRs or GDRs where the company offers its domestic shareholders the choice to submit their shares back to the company so that ADRs or GDRs can be issued on the basis of the returned shares. The proceeds are remitted back to India and distributed among the domestic shareholders who had returned their shares.

Particular financings

11 What special considerations apply to offerings of exchangeable or convertible securities, warrants or depositary shares or rights offerings?

Convertible securities

The Investor Guidelines prevent a bonus or rights offering pending conversion of domestic convertible debentures unless similar benefits are extended to the holders of the convertible debentures.

As explained earlier, convertible securities acquired (converted) through a private placement are locked in for a period of one year. However, the lock-in period will be reduced to the extent the securities had been previously locked in.

In addition, Indian companies can also offer FCCBs which are convertible into equity shares at the choice of the investor. The provisions relating to offerings of FCCBs have been discussed earlier.

Warrants

Section 114 of the Companies Act allows a public company limited by shares, if authorised by its articles, and with the previous approval of the government of India, to offer a warrant with respect to any fully paid-up shares, and provide for the payment of future dividends on the shares specified in the warrant. The bearer of the share warrant is entitled to the specified shares, upon the warrant's delivery.

As explained earlier, warrants exercised through a private placement are locked in for a period of one year. However, the lock-in period will be reduced to the extent the securities had been previously locked in.

Depository shares

A foreign issuer is eligible to offer Indian depository receipts (IDRs) only if its pre-issue paid-up capital and free reserves are at least US$100 million and it has had an average turnover of US$500 million during the last three financial years, it has been making profits for at least five years preceding the offering, it has been declaring dividend of not less than 10 per cent each year for the said period, and its pre-issue debt equity ratio is not more than 2:1. In addition, repatriation of proceeds from the offering of the IDRs will be subject to laws relating to the export of foreign exchange, the IDRs shall not be redeemable into the underlying equity shares for a period of one year from the offering of the IDRs, and IDRs offered in any financial year shall not exceed 15 per cent of the issuer's paid-up capital and free reserves. The issuer will require the prior permission of SEBI to offer the IDRs. The procedure to file the offer document is very similar to that of an Indian company as discussed previously.

In addition, Indian companies have access to the global capital markets by offering equity shares through ADRs or GDRs. The provisions relating to offerings of ADRs or GDRs have been discussed earlier.

Rights offerings

In the case of a rights offering, a draft letter of offer is filed with SEBI in lieu of a draft offer document, and the final approved letter of offer needs to be filed with the SE(s) and not the RoC. A letter of offer must contain most of the information contained in an offer document with certain exceptions. Certain information including general information about the issuer, capital structure, details of business, financial information regarding group companies, details regarding previous offerings, and outstanding securities issued by issuer as of the date of filing the letter of offer need not be disclosed if the following requirements are met:

- the issuer has been filing periodic statements containing financial results and shareholding patterns with the SE(s) and RoC for the last three years and these statements are available on the website of the SE(s) or a common e-filing platform;
- the issuer has an investor grievance handling mechanism including a committee that meets regularly, with a clearly laid out system to timely and satisfactorily address investor grievances; and
- the LM has certified compliance with the above requirements.

In addition, the issuer needs to provide an undertaking to SEBI in the letter of offer, along with a copy of the offer document or letter of offer of the immediately preceding offering, certifying that nothing material has changed in respect of disclosures made by the issuer since the previous offering.

Underwriting arrangements

12 What types of underwriting arrangements are commonly used?

There are various kinds of underwriting arrangements used in India:

- syndicate underwriting, where two or more agencies or underwriters jointly underwrite an offering of securities;
- sub-underwriting, where an underwriter gets a part of the offering underwritten by another agency. The name of every underwriter is mentioned in the offer document along with the amount of securities underwritten by him; and
- firm underwriting, where underwriters apply for a block of securities. The underwriters agree to take up and pay for this block of securities as ordinary subscribers in addition to their commitment as underwriters.

13 What does the underwriting agreement typically provide with respect to indemnity, force majeure clauses, success fees and over-allotment options?

Indemnity

Underwriting agreements typically contain provisions under which the issuer agrees to indemnify the underwriter (and its associates) against all claims and losses arising out of any untrue statements or omission of material facts in the issue documents (ie, the prospectus and any regulatory filings). However, this indemnity does not extend to untrue or omitted information relating to any underwriter furnished to the issuer for use in any of the issue documents, in which case the issuer will be indemnified by the underwriter. In case of a syndicate of underwriters, the underwriters are severally and not jointly liable.

In case the indemnification provision is either unavailable or insufficient to provide for the losses of a party, or not permitted or legally enforceable, underwriting agreements provide a mechanism through which the issuer and underwriter contribute to the loss in such proportion as is appropriate to reflect the relative benefits received by the issuer and underwriter from the issue, or the relative fault of the issuer and the underwriter resulting in the loss, or both. The relative benefits are determined by the net proceeds received by the issuer from the issue compared to the total fee received by the underwriter. The relative fault is determined by factors such as whether the untrue statement or omission of material fact relates to information provided by the issuer or the underwriter, and the parties' intent, knowledge and opportunity to correct the misrepresentation or prevent the omission of material fact.

Force majeure

Typical force majeure and termination clauses permit underwriters to terminate their obligations under the underwriting agreement, if a material disruption in the trading of the relevant stock exchange(s) occurs, a banking moratorium or policy change is declared by the relevant regulatory authorities, material adverse changes in the relevant financial markets, an outbreak of hostilities such as terrorism, or a natural calamity that makes it impracticable or inadvisable to market or enforce the issue as contemplated in the issue documents. Underwriters may also terminate their obligations under the underwriting agreement due to a development or change in the condition of the issuer, including changes to finances, assets, management, or operations, that in the underwriters' judgement is material and adverse making it impracticable or inadvisable to proceed with the proposed issue.

Success fees

The Companies Act restricts an underwriter's commission to the lesser of 5 per cent of the offer price in the case of shares and 2.5 per cent in the case of debentures, or as authorised by the articles of the issuer. The commission is payable upon allotment of the shares, unless allotment is being made to the underwriters as well, in which case the commission shall not be payable until the underwriters pay the application and allotment moneys with respect to their allotment.

Over-allotment options

The Investor Guidelines permit an over-allotment option in the underwriting agreement up to 15 per cent of the total offering size, if the demand exceeds expectations and the security trades above its offering price.

14 What additional regulations apply to underwriting arrangements?

The SEBI (Underwriters) Regulations, 1993 deal with issues such as registration, capital adequacy, obligations and responsibilities of underwriters. The important provisions of the regulations are:

- every underwriter must be registered with SEBI;
- every underwriter must fulfil capital adequacy requirements which are two million Indian rupees unless the underwriter is a stockbroker, in which case the capital adequacy requirements will depend on the stock exchange of which he is a member;
- every underwriter must abide by a specified code of conduct;
- every underwriter must enter into an agreement with the issuer on whose behalf it is acting;
- every underwriter called upon to subscribe to securities pursuant to an agreement must do so within forty-five days of being intimated by the issuer of securities;
- every underwriter must maintain proper books of accounts and records of all securities and clients it is dealing with for a period of five years; and
- every underwriter must appoint a compliance officer whose sole purpose is to ensure compliance with these regulations.

Ongoing reporting obligations

15 In which instances does an issuer of securities become subject to ongoing reporting obligations?

The LM is required to provide a three-day post-monitoring report and a final report to SEBI, on behalf of the issuer. The due date for the final report in case of a public offering is the earlier of the third day from the date of listing of the shares on the SE or 78 days from the date of closing of the subscription. The due date for the final report in case of a rights offering is the 50th day from the date of closing of the subscription.

In case of undersubscribed offerings, the LM must provide to SEBI all information relating to underwriters who failed to meet their underwriting obligations.

16 What information is a reporting company required to make available to the public?

An issuer must issue public notices in all newspapers in which the issuer had issued pre-offer advertisements containing true and fair disclosures of all material developments taking place between the filing of the offer document with the RoC and the date of allotment of securities, relating to the business and securities of the issuer and its group companies, all of which may have a material effect on the issuer.

In addition, the LM must issue an advertisement giving details of oversubscription, the basis of the allotment, the number, value and percentage of applications with successful allotees, the date of completion of despatch of share certificates and the date of filing of the listing application, within 10 days of completion of these activities in an English, Hindi and regional language daily circulated in the place of the issuer's registered office.

In addition, all listed companies are required to disclose the following information to the relevant stock exchanges:

- the aggregate number of shares held by all persons who acquire more than 5 per cent of the shares in the company within seven days of being notified of such acquisition;
- annual disclosures of changes, if any, to the shareholding

Update and trends

Price ceiling
SEBI plans to announce guidelines on the ceiling of listing prices for debutante shares. The move is aimed at preventing prices of debutante shares from rising beyond a certain limit on the listing day when circuit filters are not operational. Circuit filters which prevent shares from rising or falling beyond a prescribed limit are set in only the day after shares are listed.

IPO grading
SEBI also plans to make grading of initial public offerings (IPO(s)) mandatory. The gradings will range from one to five and be done by credit rating agencies. Apart from strengthening retail investors' understanding of an IPO, the gradings will also help investors obtain information about the quality of the offer and take an informed decision.

of persons who have acquired more than 5 per cent of the shares in the previous financial year, and the shareholding of person(s) who have control over the company within 30 days from the end of the financial year, ie, 31 March, and the record date of the company for the purposes of declaration of dividend;
- the company's intention to delist its shares by completing an application in the prescribed format and making a public announcement; and
- all price sensitive information which may also be displayed on the website of the company or the relevant stock exchanges.

Anti-manipulation rules

17 What are the main rules prohibiting manipulative practices in securities offerings and secondary market transactions?

The main statutory references prohibiting manipulative practices are contained in the SEBI Act supplemented by the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations 2003 (the Prohibition Regulations). The Prohibition Regulations identify a list of prohibited dealings in securities including buying and selling securities in a fraudulent manner, use or employing any manipulative or deceptive device or contrivance, and engaging in any act which operates as fraud or deceit, in connection with the offering, purchase or sale of any security listed or proposed to be listed on a stock exchange.

The Prohibition Regulations include the following activities within the ambit of fraudulent or unfair trade practice:
- indulging in an act which creates a false or misleading appearance of trading in the securities market;
- dealing in a security not intended to effect the transfer of beneficial ownership but intended to operate only as a device to cause fluctuations in the price for wrongful gain or to avoid any loss;
- advancing money to induce another to buy any security with the intention of securing the minimum subscription of an offering;
- any act or omission amounting to manipulation of the price of a security;
- reporting or causing a person dealing in securities to report any information which is not true or which he does not believe to be true;
- entering into a transaction in securities without any intention of performing it;
- the selling, dealing or pledging of stolen or counterfeit security;
- an intermediary promising a certain price in respect of the buying or selling of a security to a client and waiting until a discrepancy arises in the price to retain the difference as a profit;
- an intermediary providing his or her clients with information relating to a security that cannot be verified;
- an advertisement that is misleading or that contains information in a distorted manner which may influence the decisions of investors;
- intermediaries reporting transactions in an inflated manner to increase their commission, or provide a false appearance of trading in securities or to cause fluctuations in prices;
- an intermediary pre-dating or otherwise falsifying records;
- an intermediary buying or selling securities in advance of a substantial client order; and
- planting false or misleading news which may induce the sale or purchase of securities.

Liabilities and enforcement

18 What are the most common bases of liability for a securities transaction?

Some common bases of liability as identified in the SEBI Act and Prohibition Regulations are as follows:
- any person who is required to furnish information to SEBI or an investor could be held liable for failing to provide such information;
- an intermediary can be held liable for not entering into an agreement with the issuer prior to acting on the issuer's behalf;
- any person or entity which fails to redress the grievances of investors when called upon by SEBI to do so;
- any stockbroker who fails to perform his duties;
- non-disclosure of acquisition of shares and takeovers; and
- any person indulging in the unfair trade practices enumerated in question 17.

19 What are the main mechanisms for seeking remedies and sanctions for improper securities activities?

SEBI has the responsibility under the SEBI Act and Prohibition Regulations to investigate any suspected violations of the applicable statues or where they suspect that securities are being dealt with in a manner detrimental to investors or the securities market. In doing so, SEBI will appoint an adjudicating officer to undertake an investigation and submit a report to SEBI.

If the adjudicating officer is satisfied that a person or entity has contravened the provisions of the SEBI Act, he or she may impose a penalty in accordance with the SEBI Act. Further, upon receipt of the report, SEBI has wide powers including those to:

- suspend the trading of the security found to be involved in a fraudulent and unfair trade practice;
- restrain persons from accessing the securities market and to prohibit any person associated with the securities market from buying, selling or dealing in securities;
- impound and retain the proceeds or securities in respect of any transaction which is in violation of the Prohibition Regulations;
- direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of a fraudulent and unfair transaction;
- require the person concerned to call upon any of its officers, other employees or representatives to refrain from dealing in securities in any particular manner; and
- direct the person concerned to dispose of any securities acquired in contravention of the Prohibition Regulations, in such manner as SEBI may deem fit to restore the status that existed prior to the said contravention.

Any appeal of a decision of the adjudicating officer or SEBI lies to the Securities Appellate Tribunal established under the SEBI Act, and a final appeal from a decision by the Securities Appellate Tribunal lies with the Supreme Court of India.

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