

PRACTICAL AND REGULATORY ASPECTS OF IPO

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Preliminary check for IPO

No issuer shall make an IPO of specified securities:

- If the issuer, any of its promoters, promoter group or directors or persons in control of the issuer are debarred by SEBI from accessing the capital market or if any such person was or also is a promoter, director or person in control of any other company which is similarly debarred by SEBI
- If the issuer is in the list of willful defaulters published by the RBI or it is in default of payment of interest or repayment of principal in respect of its publicly issued debt instruments for more than six months
- Unless it has made an application to at least one recognized stock exchange for listing of these securities and has chosen one of them as the designated stock exchange:
 - The issuer shall make an application for listing in at least one recognized stock exchange having nationwide trading terminals
- Unless it has entered into an agreement with a depository for dematerializations of these securities already issued or proposed to be issued
- Unless all existing partly paid-up equity shares of the issuer have either been fully paid up or forfeited
- Unless firm arrangements of finance through verifiable means towards 75% of the stated means of finance, (excluding the IPO amount or through existing identifiable internal accruals) have been made

Eligibility norms for making an IPO

Entry Norm I (Profitability Route)

Reg 26 (1) of ICDR

- Net tangible assets of at least Rs. 3 crore in each of the preceding three full years of which not more than 50% are held in monetary assets. However, the limit of 50% on monetary assets shall not be applicable in case the public offer is made entirely through offer for sale.
- Minimum of Rs. 15 crore as average pre-tax operating profit in at least three years of the immediately preceding five years.
- Net worth of at least Rs. 1 crore in each of the preceding three full years.
- If there has been a change in the company's name, at least 50% of the revenue for preceding one year should be from the new activity denoted by the new name
- The issue size should not exceed 5 times the pre-issue net worth

Entry Norm II (QIB Route)

Reg 26 (2) of ICDR

To provide sufficient flexibility and also to ensure that genuine companies are not limited from fund raising on account of strict parameters, SEBI has provided the alternative route to the companies not satisfying any of the above conditions, for accessing the primary market. Issue shall be through book building route, with at least 75% of net offer to the public to be mandatory allotted to the Qualified Institutional Buyers (QIBs). The company shall refund the subscription money if the minimum subscription of QIBs is not attained.

Regulatory Clearances

- Pre – issue documentation (DRHP-RHP-Prospectus) and liaison with market regulators
- Post issue compliances

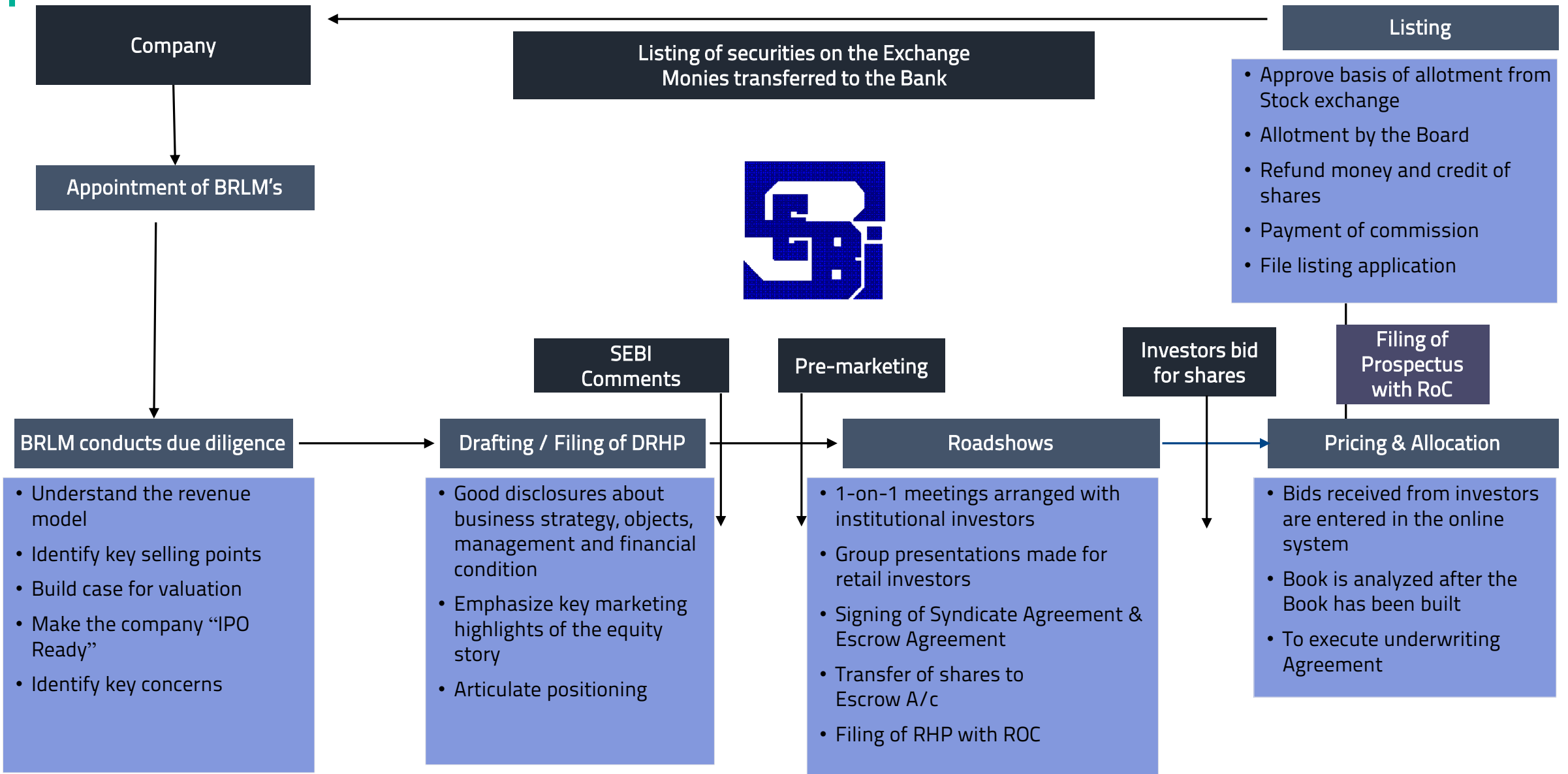
Reservation Buckets

- Retail – 35%
- NIB – 15%
- QIBs – 50%

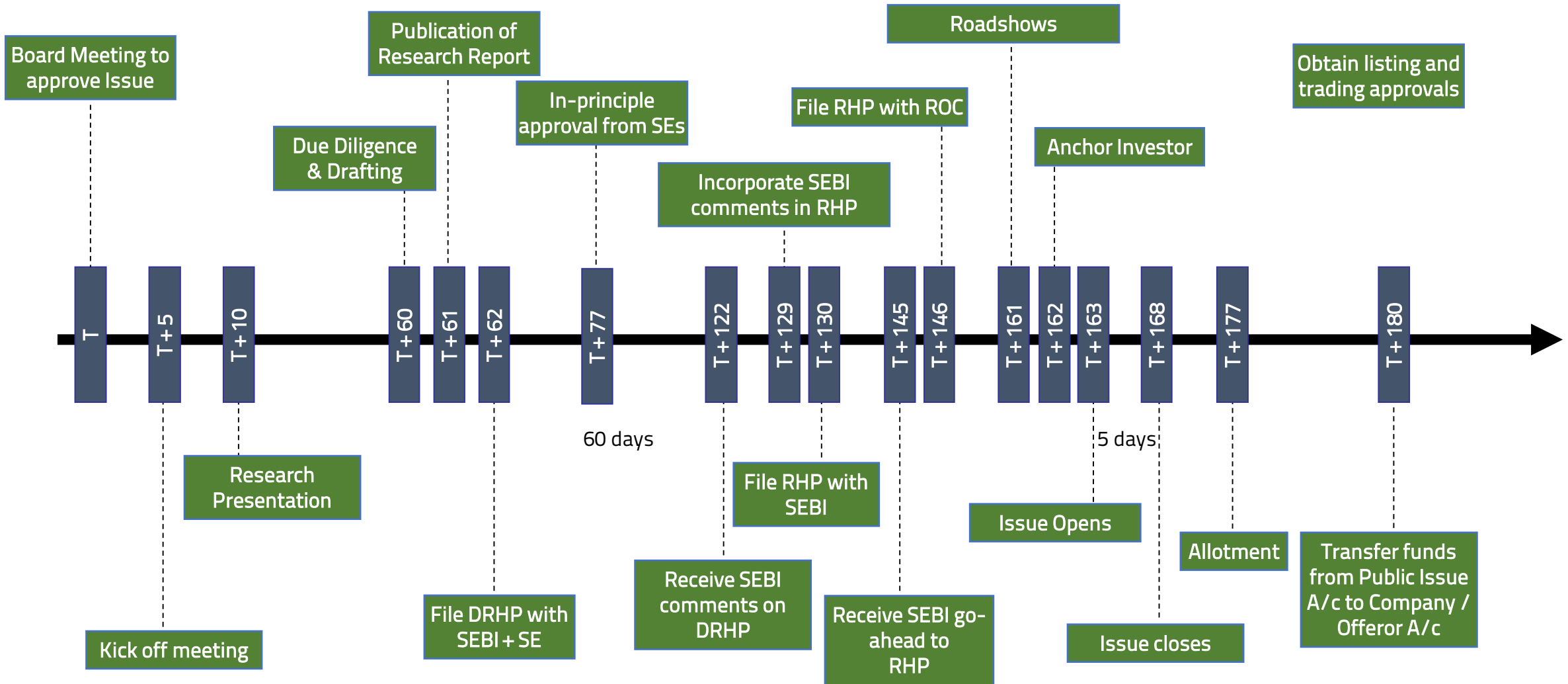
After Market Support

- Appropriate pricing to ensure sustainability of post listing demand

IPO Process Flow



Indicative IPO Timeline



Note: Timelines may alter depending on preparedness of the Company, Market sentiments (secondary and primary) & SEBI & SE clearance

Price band to be announced *at least five working days* before the opening of the bid

IPO work involved

Timeline	Key activities	Scope
Pre DRHP filing	<ul style="list-style-type: none"> ■ Due diligence ■ Drafting of DRHP ■ Deal research 	<ul style="list-style-type: none"> ■ Due diligence of the Company's operations/ management/ business plans/ legal etc. ■ Work extensively with counsels to draft DRHP ■ Identify key investment themes and positioning in line with global industry standards ■ Coordinate research analyst briefing and deal research ■ Ensure compliance with all the relevant regulations ■ Overall control over timelines
SEBI review period	<ul style="list-style-type: none"> ■ SEBI review of DRHP ■ IPO grading ■ Appointment of intermediaries 	<ul style="list-style-type: none"> ■ Respond to interim and final comments ■ Coordination with IPO grading agency ■ Appointment of Printers, Ad & PR agency, Registrars and Bankers to the Issue
Issue marketing	<ul style="list-style-type: none"> ■ Institutional ■ Non institutional ■ Advertising & PR 	<ul style="list-style-type: none"> ■ Formulation of detailed marketing plan ■ Research premarketing and continuous support ■ Identify target institutional investors for the offering and schedule investor interactions ■ Finalising Media and PR strategy ■ Organize broker conferences, interactions with key opinion makers and HNIs
Post Issue	<ul style="list-style-type: none"> ■ Post issue activities ■ Post IPO support 	<ul style="list-style-type: none"> ■ Post issue coordination with registrars, bankers to the issue and SCSBs ■ Ensuring strict compliance with allotment, refund and listing timelines ■ Post issue research and corporate access coverage

Preparation steps for the IPO

Capital Structure



- Determine primary/secondary mix, depending on capital requirements/ monetisation objectives
- Offer-for-sale: Only eligible securities held for > 1 year can be offered for sale
- Evaluate bonus issue or stock split to reduce the issue price to an “optically” attractive level for retail investors

Financials



- Auditors’ report for a period 5 years/for the period of issuer existence, the balance stub period (not later than 6 months on issue opening date)
- Latest audited accounts should not be more than 135 days old as on “Closing”
- Auditors to furnish Comfort letter on all financial information in the document at every filing

Objects of the issue



- Decide on fixed size issue vs. fixed dilution
- Primary component to justify use of proceeds in the business over the next 24 - 36 months
 - Upto 25% of primary offering can be towards General Corporate Purpose
- SEBI had laid down criteria for rejection of offer document in relation to objects of the issue

Board reconstitution



- Identify and introduce new independent board members in compliance with SEBI (LODR) requirements
 - One-third of the Board to be independent Directors in case of a non-executive Chairman; One-half to be independent Directors in case of an executive Chairman
 - One-half to be independent Directors in case where a Promoter or a person related to promoters is the non-executive Chairman
- Create Audit and Remuneration committees with appropriate independent representation

Miscellaneous



- Obtain Board and Shareholder Approval for IPO authorising a committee / internal task force for the IPO
- Required to disclose promoter/promoter group before listing
- Prepare disclosures on key managerial personnel, updation of business plan, material contracts and litigation, subsidiaries, group companies etc. in compliance with SEBI guidelines
- Appointment of intermediaries
- The Articles of Association need to include only customary clauses applicable for listed companies
 - Special rights to any shareholders need to fall away

Management Activities for IPO

Key activities that will require Management's attention

- Amendment to Articles of Association, if required
- FIPB / RBI approvals
- Issue Structure
 - Reservations for employees, Pre-IPO ESOS / ESPS (if planned)
 - Pre-IPO placement
- Compliance with SEBI (LODR) Regulations on Corporate Governance including Board Composition
- Audit requirements & Audit timeline
- Restatement of last 5 yrs' financial statements as per Indian AS (as per SEBI)
- Advertising & Promotion Campaigns – must adhere to publicity guidelines
- DRHP filing after 1 year from the Bonus Issue Date (else Investor's Bonus shares will get locked in)
- Completion of all corporate restructurings
- Completion of all acquisitions/ disposal of undertakings

IPO Process – Key Intermediaries Involved in IPO

Key Responsibility

Printers	Printing of DRHP / RHP, Prospectus, forms and other stationery
Registrar to the Issue	Processing of Bid-cum Application forms Co-ordinating with Escrow Bankers, BRLMs for submitting reports to SEBI Prepare documents for finalizing Basis of Allotment and listing application Arranging for refunds, Demat credit, Printing of CANs etc.
Advertising / PR Agency	Corporate and Issue advertising / PR Managing logistics of domestic road shows
IPO Grading Agency (optional)	Provides IPO grading (review of the Company background, Corporate Governance, Business, financial performance and SEBI observations without taking cognizance of the price of the security)
Depository	Dematerialization of the company's shares Demat transfers of shares Tripartite Agreement Credit of shares to allottees
Escrow collection Banks & Bankers to the Issue	Collection of application moneys Provide provisional and final certificates
Monitoring Agency	For an issue size exceeding Rs. 1,000 mm Monitors use of proceeds after the closure of the Issue and receipt of funds by the Company

IPO Process – Key Regulatory Considerations

General Conditions for Public Issues

Minimum Dilution / Minimum Public Float

- Minimum threshold level of public holding is 25% for all listed companies in private sector.
 - For a new listing i.e. for an IPO, if the post issue capital of the company calculated at offer price is more than INR 40,000 mm, the company is allowed to go public with 10% public shareholding and comply with the 25% public shareholding requirement within 3 years

Financial Statement Requirements

- Audited standalone and consolidated Ind AS financials for past 5 years (restated as required by SEBI)
 - Accounts should not be of a period older than 6 months from the date of issue opening

Use of Proceeds (For Primary Portion)

- SEBI takes a stringent view with respect to use of IPO proceeds
- Need to justify the use of proceeds to SEBI and demonstrate “firm” tie up of funds for 75% of overall means of finance excluding IPO proceeds

IPO Process – Key Regulatory Considerations

Promoter Contribution

Promoter Definition

- Promoter includes person or persons:
 - In over-all control of the company OR
 - Instrumental in the formulation of a plan or program pursuant to which the securities are offered to the public OR
 - named in prospectus as promoters

Promoter Contribution

- Promoter's shareholding not to be less than 20% of the post IPO capital of the Company
 - In case of a shortfall in promoter's contribution, promoter to bring in required amount of promoter's contribution at least one day prior to the IPO opening date, at the IPO valuation

Ineligibility for Promoter Contribution

- Following securities acquired by Promoter, during the preceding 3 years :
 - Acquired for consideration other than cash and revaluation of assets or capitalisation of intangible assets is involved in the transaction
 - Bonus issue done out of revaluation reserves or reserves without accrual of cash resources or against shares which are otherwise ineligible
- Securities acquired in preceding one year at a price lower than the IPO price, unless promoters pay the difference to the issuer
- Exception in both cases above made for shares acquired pursuant to scheme of merger in lieu of business and invested capital that had been in existence for a period of more than 1 year prior to such approval
- Pledged securities held by the Promoters

IPO Process – Key Regulatory Considerations

Lock Up Requirements

Lock-up for Promoters

- Minimum promoter contribution (20% of the post IPO capital of the Company) to be locked in for period of three year post the IPO
- Excess promoter contribution (anything above 20% of the post IPO capital of the Company) to be locked in for a period of one year post the IPO

Lock-up of Other Shareholders

- Pre issue capital locked in for a period of 1 years; except
 - Shares held by a venture capital fund or a foreign venture capital investor for at least one year as on the date of draft filing
 - For such investors (venture capital fund or a foreign venture capital investor), where equity shares have resulted on conversion of fully paid compulsorily convertible securities, the holding period of such securities will also be considered in the calculation of the one year period
 - Pre Issue shares held by employees other than promoters issued pursuant to SEBI compliant ESOP scheme

Relaxation of Lock-up Provision

- Inter-se transfer of shares among Promoters or pre IPO holders subject to continuation of residual lock-in period with the new holders

IPO Process – Key Regulatory Considerations

Other Relevant Regulations

Reservation

- Reservation on competitive basis for following categories allowed in a book built IPO:
 - Employees of the issuer including employees of promoting companies in case of a new issuer
 - Value of allotment in pursuance to reservation in employee reservation portion shall not exceed two lakhs
 - Shareholders (other than promoters) of:
 - Listed promoting companies in case of a new issuer
 - Listed group companies in case of an existing issuer
 - Business associates including depositors, bondholders or subscribers to services of the company
- In a non book built IPO, reservation is not allowed for business associates

Restrictions

- The aggregate of reservations for employees shall not exceed 5% of the post issue capital
- Reservations for shareholders shall not exceed 10% of the issue size
- Reservations for business associates shall not exceed 5% of the issue size
- No further application in the net offer to the public category from applicants in the reserved category (other than employees or retail shareholders) shall be entertained

IPO Process – Key Regulatory Considerations

Concept of Anchor Investor

Concept of “Anchor Investor”

- SEBI has also introduced "Anchor investor concept" in IPOs on June 18, 2009
- Book opens one day prior to issue opening for general public
- 30% of the QIB portion of IPO reserved (on discretionary basis) for Anchor Investors
- Lock-in of 30 days from the date of allotment in the Issue
- Anchor investor will need to pay a higher price in the event the book building price in the IPO is higher than the price at which it has got allocation
- Anchor investors includes mutual funds, other domestic and international institutional investors

IPO Process – Key Regulatory Considerations

Other Relevant Regulations

Options Outstanding Pre-IPO

- At IPO, there should be no outstanding warrants or financial instruments with option to convert into equity shares at a later date,
- This does not apply to:
 - ESOPs
 - Options outstanding pursuant to an IPO of convertible debt instruments whose conversion price was determined and disclosed in the prospectus of the issue of such instruments

Share Capital

- No company shall make a public or rights issue unless partly paid shares are made fully paid up or forfeited

Use of Proceeds

- Means of finance other than IPO proceeds and existing identifiable internal accruals to be firmed up to the extent of 75% of the same
- If the issue size exceeds Rs. 100 Crores, use of proceeds of the issue to be monitored by a public financial institution or by one of the scheduled commercial banks named in the offer document as bankers of the issuer

IPO Grading

- SEBI has announced making the IPO grading mechanism voluntary
- Grading may be obtained from any of the credit rating agencies - CRISIL, CARE, ICRA, Fitch, Brickwork Ratings
- Grading to be obtained at the time of filing of the RHP with ROC

IPO Process – Key Regulatory Considerations

Disclosure Considerations

Key Disclosure Items

- General information about the Company
- Capital structure (both pre and post-IPO) and information regarding major shareholders
- Terms of the IPO including basis for issue price and objective for which the capital is being raised
- Information on the Industry, Company and management, including-
 - History, main objects and present business of the Company
 - Details of subsidiaries and joint ventures, if any
 - Background of the Promoters and key managerial personnel ⁽¹⁾; data on companies under the same management which have made any capital issue during the past three years
 - Material contracts and their availability for inspection
- Description of Equity Shares and Terms of the Articles of Association
- MD&A of the Financial Condition and Results of the Operations as reflected in the financial statements
- Key risk factors
- Outstanding litigations or defaults by the issuer, promoter and group companies
- Prominent notes highlighting networth before issue, cost of shares to promoters and book value of shares, details of group companies, disclosures pertaining to change of name in the last 3 years, details of financial arrangements where promoters , directors etc. have financed the purchase of the issuers securities by any other person in the last 6 months

(1) Key Management Personnel means the officers vested with executive powers and the officers at the level immediately below the board of directors of the issuer and includes any other person whom the issuer may declare as a key management personnel

IPO Process – Key Regulatory Considerations

Post Listing Reporting & Other Considerations

Audit Committee

- Qualified audit committee of at least 3 members (all members to be non-executive directors)
 - Two-third to be independent; one with financial and accounting knowledge
 - Chairman of audit committee must be independent
 - Audit committee should meet at least four times a year and not more than four months shall elapse between two meetings

Financial Reporting Requirements

- Quarterly Reporting
 - Standalone (consolidated is optional) financials
 - Segmental financial results
 - Unaudited limited reviewed results within forty five days of the quarter ending
 - Additionally, a statement of assets and liabilities also needs to be submitted on a half-yearly basis
 - Shareholding pattern with lists of shareholders holding over 1% stake and over 5% stake
- Annual Results
 - Standalone and consolidated financials prepared based on Indian GAAP (may submit the consolidated financials as per IFRS)
 - Management Discussion and Analysis Report
 - Material related party transactions
 - Corporate governance report
- Clear 7 calendar days notice to stock exchanges for board meetings to approve financials

IPO Process – Key Regulatory Considerations

Post Listing Reporting & Other Considerations

Prior Intimation to Exchanges

- Recommendation or declaration of a dividend
- Recommendation of rights issue or convertible debentures or of debentures carrying a right to subscribe to equity shares
- Declaration of Bonus
- Declaration of Buyback of securities

Report on corporate governance

- A separate section on corporate governance to be included in the annual reports with disclosures on compliance of mandatory and non-mandatory requirements
- Submission of quarterly compliance report to the stock exchanges

Subsidiary company

- At least one independent director on the Board of the holding company shall be a director on the Board of a material non listed Indian subsidiary company
- Audit committee of the listed holding company shall also review the financial statements, in particular, the investments by the unlisted subsidiary company

Others

- Minimum level of non-promoter holding for continuous listing to be maintained
- Comply with the relevant provisions of the SEBI take-over code
- Comply with the disclosure requirements specified under the SEBI Insider Trading Regulations

IPO Process – Key Regulatory Considerations

Additional Committees

Investors Grievance Committee

- To be set up under the chairmanship of a non-executive director
- Committee to specifically look into redressing shareholder and investor complaints

Remuneration Committee

- To consist of at least 3 Directors, all of whom to be non-executive directors, with the chairman being an independent director
 - Determine company's compensation policy and other benefits for executive directors

Compliance Officer

- Company Secretary to be appointed as the Compliance Officer
- Compliance Officer to directly liaise with relevant regulatory authorities (SEBI, Stock Exchanges, RoC etc) and investors with respect to implementation of various clauses, rules, regulation and other directives of such such authorities

CEO/CFO Certification

- CEO/Managing Director and CFO to certify the financial statements to the Board of the Company

IPO Process – Key Regulatory Considerations

Corporate Governance Considerations

Controls & Procedures

- Auditor's certificate for compliance of corporate governance conditions
- Audit Committee to review the adequacy of internal control systems and internal audit
- Management Discussion and Analysis Report to cover internal control systems and their adequacy

CEO & CFO

- Confirmation from Directors that they have selected such accounting policies and applied them consistently and made judgements that are reasonable and prudent to give true and fair view of the state of affairs of the company
- Statement of responsibility for unaudited quarterly results from Issuer's management with approval from the Board of Directors
- Discuss the adequacy of internal control and audit in the management report
- Detailed disclosures on the remuneration of directors

Director Independence & Oversight Officer

- Not less than 50% of board comprising of non-executive directors
- If Chairman⁽¹⁾ is non-executive director, at least one third of board should comprise of independent directors
- If Chairman is executive director, at least half of board should comprise of independent directors

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

Objects of the Issue

Key Provisions

Changes which require fresh filing of the draft offer document with SEBI

- Any addition in objects of the issue resulting in increase in estimated issue size or estimated means of finance by more than twenty percent
- Any increase in estimated deployment in any of the objects of the issue by more than twenty percent
- Any increase or decrease in estimated issue size by more than twenty percent
- Any addition or deletion to the objects of the issue resulting in a change in the estimated issue size or estimated means of finance by more than 10% and not exceeding 20% will require filing of the updated offer document with SEBI

Options

Issue size fixed by No. of shares

Issue size fixed by size

Pros

- Dilution is decided at the time of filing of DRHP
- Can assist in optimising dilution and capturing valuation upside in a rising market
- Enables the Company to raise the required amount of funds for project implementation

Cons

- Significant variation will result in refiling and entail delay
- Benefit of upside at a later stage cannot be captured
- Excessive dilution in a falling market

THANK YOU