

	- The Shares have been held by the VCF or the FVCI, for a period of atleast 1 year as on the date of filing draft prospectus with SEBI, - If the shares being held by the VCF or FVCI have been acquired on conversion of convertible instruments at any time before the date of filing draft prospectus with the SEBI, then the period during which the convertible instruments were held as fully paid up, shall be included for purpose of calculation of 1 year period. - Convertible Instruments shall be deemed to be fully paid up, if the entire amount payable thereon has been paid and no further payment is envisaged to be made at the time of their conversion.
2. Lock-in of specified Securities lent to Stabilising Agent under Green Shoe Option	Not locked in for the period starting from the date of lending of such specified securities and ending on the date on which they are returned to the lender u/r 45(5) / (6). The securities shall be locked-in for the remaining period from the date on which they are returned to the lender.

30. Can the Promoters Contribution Portion which is subject to lock-in be pledged for obtaining loan? [R – 39]

Locked-in Securities held by Promoters may be pledged with Schedule Commercial Banks or Financial Institutions, as Collateral Security for the loans granted by them subject to the following conditions –

Pledge of Securities –	Condition
Which is subscribed as minimum Promoter contribution	The Loan has been granted by the Banks / Financial Institutions for the purpose of financing one or more of the objects of the issue and pledge of the locked-in securities is one of the terms of sanction of the loan
Which is subscribed excess of Minimum Promoter contribution	Pledge of the locked-in securities is one of the terms of sanction of the loan

31. Can the Locked-in Securities be transferred to other persons? [R – 40]

1. Restriction on Transferability:

Situation	Permissible Transfers	Condition
Transfer of Locked in securities held by “Promoters”	- Another Promoter - Any Person of the Promoter Group - A New Promoter - A Person in Control of the Issuer	Lock-in on such specified securities shall continue for the remaining period with the transferee and such transferee shall not be eligible to transfer them till the lock-in period stipulated has expired.
Transfer of Locked in securities held by Persons “Other than Promoters”	Any other person holding the locked-in securities along with the securities proposed to be transferred.	

2. Meaning of Promoter [R – 2(za)]:

“Promoter” includes –	“Promoter” excludes (i.e not deemed as Promoters)
- the Person or Persons who are in control of the Issuer - the Person or Persons who are instrumental in the formulation of a plan or programme pursuant to which specified Securities are offered to Public - the Person or Persons named in the offer document as Promoters	- A Director or Officer of the Issuer or a person, if acting as such merely in his professional capacity - a Financial Institution, Scheduled Bank, Foreign Institutional Investor and Mutual Fund despite holding 10% or more of the Equity Share Capital of the Issuer, however they shall be treated as promoter for the Subsidiaries or Companies promoted by them or for the Mutual Fund sponsored by them

3. Meaning of Promoter Group [R – 2(zb)]:

Promoter Group Includes as follows –

Category	Promoter Group
Generally	Promoter Himself
Immediate Relative of Promoter	Any spouse of that person, or any parent, brother, sister or child of the person or of the spouse
Promoter is a Body Corporate	- a Subsidiary or Holding Company of such Body Corporate; Controlled Company: any Body Corporate in which the Promoter holds 10% or

	more of the Equity Share Capital • Controlling Company: Any Body Corporate which holds 10% or more of the Equity Share Capital of the Promoter • Common Control Company: any Body Corporate in which a group of Individuals or Companies or Combinations thereof which hold 20% or more of the Equity Share Capital also holds 20% or more of the Equity Share Capital of the Issuer
Promoter is an Individual	any body corporate in which 10% or more of the Equity Share Capital is held by the Promoter or an immediate relative of the promoter or a Firm or Hindu Undivided Family in which the promoter or any one or more of his immediate relative is a member any body corporate in which a body corporate above holds 10% or more, of the Equity Share Capital any Hindu Undivided Family or firm in which the aggregate shareholding of the promoter and his immediate relatives is equal to or more than 10% of the total
Disclosure in Prospectus	all persons whose shareholding is aggregated for the purpose of disclosing in the prospectus under the heading "Shareholding of the Promoter Group"

"Promoter Group" excludes (i.e not deemed as Promoter Group): A Financial Institution, Scheduled Bank, Foreign Institutional Investor and Mutual Fund despite holding 10% or more of the Equity Share Capital of the Issuer, however they shall be treated as promoter for the Subsidiaries or Companies promoted by them or for the Mutual Fund sponsored by them

PRACTICAL QUESTION M 04	An Unlisted Company, having paid-up Share Capital of Rs.3 Crores, consisting of 30,00,000 Equity Shares of Rs.10 each fully paid-up, proposes to make an IPO of 90,00,000 Equity Shares of Rs.10 each at a premium of Rs.5 per Share, in July 2010. The Promoters acquired 10,00,000 Equity Shares on 1st January 2006 and another 10,00,000 Equity Shares on 1st January 2010 at Face Value. Required – - What should be the minimum contribution that should be made by the Promoters of the above Company, in order to comply with SEBI Regulations? - State the period for which the Promoters are required to lock-in the amount in excess of the required minimum contribution.	Hint / Answer: See Questions above Post-Issue Capital = Rs.3 Crores + Rs.9 Crores = Rs.12 Crores. So, Minimum Promoters' Contribution = 20% of Rs.12 Crores = Rs.2.40 Crores, i.e. 24,00,000 Shares of Rs.10 each. Presently the Promoters hold 20,00,000 Shares, out of which 10,00,000 Shares are acquired from 1st January 2006 onwards, at face value (whereas the IPO is made a premium of Rs.5 per Share). Hence, these 10,00,000 Shares are not eligible to be included in Promoters' Contribution. However, if the Promoters bring in the difference i.e. Rs.5 × 10 Lakh Shares = Rs.50 Lakhs these Shares will also be eligible for inclusion in Promoters' Contribution. The Promoters have to subscribe for a further 4 Lakh Shares, and bring in the full amount of the Promoters' Contribution, including premium thereon, (Rs.15 × 4 Lakh Shares = Rs.60 Lakhs) atleast one day prior to the issue opening date. Lock-In Period: In respect of Minimum Promoter Contribution – 3 Years. In respect of excess contribution over minimum contribution – 1 Year

CHAPTER III – PART 5 – MINIMUM OFFER TO PUBLIC, RESERVATOINS ETC

32. What shall be minimum offer to be made to Public in a Public Issue of Shares? [R – 41]

1. Minimum Offer to public under SCRA – Rule 19(2)(b) of SCR (Rules), 1957:

Size of the Issue	Minimum Offer
Post issue capital of the Company calculated at offer price is more than Rs.4,000 Crores	Atleast 10% of each class or kind of Equity Shares or Debentures convertible into Equity Shares issued by the Company was offered and allotted to public in terms of an offer document
Other	Atleast 25% of each class or kind of Equity Shares or Debentures Convertible into Equity Shares issued by the Company was offered and allotted to public in terms of an offer document

Note: A Public Sector Company, shall always offer and allot atleast 10% of each class or kind of Equity Shares or Debentures convertible into Equity Shares to public in terms of an offer document.

2. Minimum Offer to Public under SEBI Regulations:

Type	Minimum Offer to be made to Public
Initial Public Offer (IPO)	Atleast 10% or 25% of the Post Issue Capital, as the case may be
Further Public Offer (FPO)	Atleast 10% or 25% of the Issue Size, as the case may be

3. Not Applicable: The regulation is not applicable to the following Companies –

Company	Condition
a Government Company or Statutory Authority or Corporation	Generally Exempted
any Special Purpose Vehicle set up and controlled by any one or more of above	Engaged in Infrastructure Sector (includes the facilities or services as specified in Schedule X – See Q.No.25);
an infrastructure Company – which is wholly engaged in the business of (i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining any infrastructure facility)	- Project has been appraised by one or more Public Financial Institutions; - not less than 50 % of the Project Cost is financed by one or more such institutions, jointly or severally, by way of loan or subscription to Equity Shares or a combination of both, irrespective of whether they appraise the project or not.
Type	Minimum Offer to be made to Public
Initial Public Offer (IPO)	Atleast 10% or 25% of the Post Issue Capital, as the case may be
Further Public Offer (FPO)	Atleast 10% or 25% of the Issue Size, as the case may be

33. Can a reservation be made on a Competitive Basis? Explain. [R – 42]

- Meaning of “reservation on competitive basis”:** It means reservation wherein specified securities are allotted in proportion of the number of specified securities applied for in respect of a particular reserved category to the number of specified securities reserved for that category.
- Quantum of reservations:** Issue Size for making reservation on Competitive Basis = Total Issue Size *Less* Minimum Promoters' Contribution *Less* Net Offer to Public
- Categories of Persons:**

Nature	Eligible Persons	Maximum Reservation (%)
(A) Existing Companies	• Employees of the Company	50% of the post issue capital of the issuer or Rs.1 Lakh (whichever is less)
	• Shareholders of Listed Promoting Companies (In case promoter is a Listed Company) (See Note 1 below)	10% of the Issue Size
(B) New Companies (New Issuer i.e an issuer which has not completed 12 months of commercial operation and its audited operative results are not available)	• Persons who are in the permanent and full time employment of the Promoting Companies excluding the Promoters and an immediate relative of the Promoter of such Companies	50% of the post issue capital of the issuer or Rs.2 Lakhs (whichever is less)
	• Shareholders of Listed Group Companies (In case promoter is a Listed Company) Note 1: However, if the promoting Companies are designated Financial Institutions or State and Central Financial Institutions, the Shareholders of such promoting Companies shall not be eligible for the reservation on competitive basis.	10% of the Issue Size
(C) Depositors, Bondholders, or Subscribers to services of the Issuer making an IPO	Provided, they are as on the date of filing the draft offer document with the Board are associated with the Issuer. Note 2: Provided The Issuer shall not make the reservation to the issue Management Team, Syndicate Members, their Promoters, Directors and Employees and for the group or Associate Companies of the issue management team and Syndicate Members and their Promoters, Directors and Employees.	5% of the Issue Size

4. Applicability for Different issues:

Particulars	Applicable Categories of Persons
IPO – Book Building Process	To all (A), (B) and (C) above
IPO – Other than Book Building Process	To only (A) and (B)
FPO (not being a composite issue)	To Retail Individual Shareholders of the Issuer

5. Additional Conditions:

No Further Application in Net Offer to Public	Any Person (except an employee and retail individual shareholder) in favour of whom reservation on competitive basis is made no further application for subscription in the net offer to public category shall be entertained
Inter-Se- Adjustments	any Unsubscribed portion in any reserved category may be added to any other reserved category and the unsubscribed portion, if any, after such inter se adjustments among the reserved categories shall be added to the net offer to the public category
Spill Over in case of Undersubscription	In case of Undersubscription in the net offer to the public category, spill-over to the extent of under subscription shall be permitted from the reserved category to the Net Public offer category
Application in reserved Categories	In the case of reserved categories, a single applicant in the reserved category may make an application for a number of specified securities which exceeds the reservation

34. Explain the modus of allocation in “Net Offer to Public” portion. [R – 43]

General: No person shall make an application in the Net Offer to Public category for that number of specified securities which exceeds the number of specified securities offered to public.

Allocation in Net Offer to Public Por:

Nature	Issue made through the book building process	Issue made “other than through” the book building process
Retail Individual Investors	Minimum 35%	Minimum 50 %. If the retail individual investor category is entitled to more than fifty per cent on proportionate basis, the retail individual investors shall be allocated that higher percentage.
Non–Institutional Investors	Minimum 15%	Remaining 50% (a) Individual Applicants other than Retail Individual Investors; and (b) Other Investors including Corporate Bodies or Institutions, irrespective of the number of specified securities applied for (c) the unsubscribed portion in either of the categories specified in clause (a) or (b) may be allocated to applicants in the other category.
Qualified Institutional Buyers (QIB's)	Maximum 50% (5% of which shall be allocated to Mutual Funds) Note 1: Existing Unlisted Company going for IPO under alternative route should allocate 50% of Net Offer to Public to QIB's. Note 2: In addition to 5% for mutual funds they shall also be eligible for allocation under the balance availbal for QIB's Note 3: The Issuer may allocate upto 30% of the portion available for allocation to QIB's to an anchor investor in accordance with the conditions specified in Schedule XI.	

35. Explain “Safety-Net Arrangement” under SEBI regulations. [R – 44]

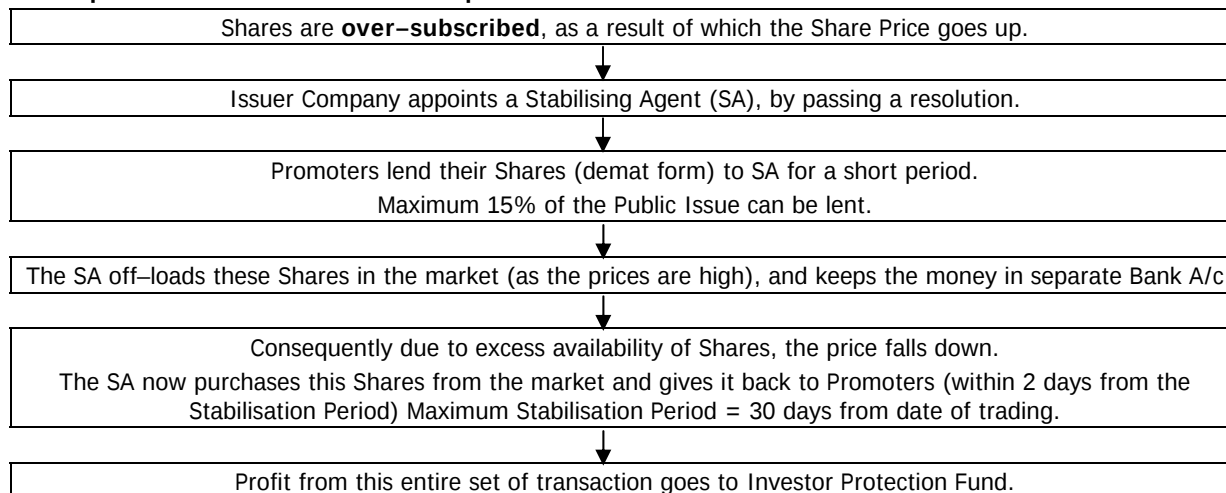
- 1. Meaning:** The term “safety net arrangement” means an arrangement provided by the issuer under which a person offers to purchase specified securities from the original resident retail individual allottees at the issue price.
- 2. Disclosure in Prospectus:** An Issuer may provide for a Safety Net Arrangement for the specified securities offered in any public issue in consultation with the merchant banker after ascertaining the financial capacity of the person offering the safety-net arrangement, subject to disclosures specified Schedule VIII (Part A).
- 3. Maximum Purchase:** The arrangement can provide for a maximum of 1000 specified securities for an offer to purchase specified securities per original Resident Retail Individual allottee at the Issue Price within a period of 6 months from the last date of despatch of security certificates or credit of demat account.

36. What is Green Shoe Option (GSO).

- 1. Meaning of Green Shoe Option:** Green Shoes Option denotes an option of allocating shares in excess of the shares included in the Public Issue. Green Shoe Option is extensively used in OPO's as a post listing price stabilization mechanism of the newly issued shares. This mechanism is been introduced in the Indian Capital Market

in the Initial Public Offerings using book building method. This shall also boost the investor's confidence by arresting the speculative forces which work immediately after the listing and thus results in short term volatility in post listing price. GSO would definitely ensure price stability so that volatility in first few days of listing is curbed.

2. Concept Flow Chart for Green Shoe Option



37. Explain the mechanism of Price Stabilisation through Green Shoe Option (GSO).

RTP

- Option to Issuer to provide for GSO:** An Issuer making a public issue of specified securities may provide GSO for stabilising the post listing price of its specified securities.
- Resolution in the General Meeting:** The Issuer should pass a resolution in the General Meeting of Shareholders approving the public issue, to allot specified securities to the Stabilising Agent, if required, on the expiry of the stabilisation period.
- Appointment of Stabilising Agent (SA):** The Issuer appoints a Merchant Banker or Book Runner, as the case may be, from amongst the Merchant Bankers appointed by the Issuer as a Stabilising Agent, who shall be responsible for the price stabilisation process.
- Agreement with SA:** Prior to filing the draft offer document with the Board, the issuer and the SA shall enter into an agreement, stating all the terms and conditions relating to the Green Shoe Option including fees charged and expenses to be incurred by the SA for discharging his responsibilities
- Maximum Size of Oversubscription under GSO:** Prior to filing the offer document with the Board, the SA has entered into an agreement with the Promoters or Pre-Issue Shareholders or both for borrowing specified securities from them, specifying therein the maximum number of specified securities that may be borrowed for the purpose of allotment or allocation of specified securities in excess of the issue size ("Over Allotment"), which shall not be in excess of **15% of the issue size**
- Determination of Total Size:** The lead merchant banker or lead book runner, in consultation with the stabilising agent, shall determine the amount of specified securities to be **over-allotted** in the public issue (Not exceeding above 15%)
- Disclosure in Draft Offer Document:** The draft and final offer documents shall contain all material disclosures about the Green Shoe Option (Schedule VIII – Part A).
- Lending of Shares:** The SA shall borrow Shares from the Promoters and / or Pre-Issue Shareholders of the Issuer Company, to the extent of the proposed over-allotment. These Shares shall be in **dematerialised** form only. The persons eligible to lend Shares are –

Type of Issue	Eligible Lender of Shares
Initial Public Offer	Promoters and Pre-Issue Shareholders
Further Public Offer	Promoters & Pre-Issue Shareholders holding more than 5% Shares

Note: Pro-Rata Allotment: The allocation of above Shares shall be on pro-rata basis to all the applicants.

9. **Decision on Buying from the market:** For the purpose of stabilisation of post-listing price of the specified securities, the SA shall determine the relevant aspects including the timing of buying such securities, quantity to be bought and the price at which such securities are to be bought from the market.
10. **Maximum Stabilisation Period:** The stabilisation process shall be available for a period **not exceeding 30 days** from the date on which trading permission is given by the RSE in respect of the specified securities allotted in the public issue.
11. **Separate Bank and DP Account:** The SA shall open a special account, distinct from the issue account, **with a bank for crediting the monies received** from the applicants against the over-allotment and a **special account with a depository participant** for crediting specified securities to be bought from the market during the stabilisation period out of the monies credited in the special bank account.
12. **Return of Shares to the Promoter / Pre-Issue Shareholders:** The specified securities bought from the market and credited in the special account with the depository participant shall be returned to the promoters or pre-issue shareholders immediately, in any case not later than 2 working days after the end of the stabilization period.
13. **SA unable to buy specified securities:** On expiry of the stabilisation period, if the SA has not been able to buy specified securities from the market to the extent of such securities over-allotted, the Issuer shall allot specified securities at issue price in dematerialised form to the extent of the shortfall to the special account with the Depository Participant, within 5 days of the closure of the stabilisation period and such specified securities shall be returned to the promoters or pre-issue shareholders by the SA in lieu of the specified securities borrowed from them and the account with the depository participant shall be closed thereafter.
14. **Listing Application:** The Issuer shall make a listing application in respect of the further specified securities allotted under GSO, to all the RSE where the specified securities allotted in the public issue are listed and the provisions of Chapter VII (Relating to Preferential Issue) shall not be applicable to such allotment.
15. **Remittance of Money:** The SA shall remit the monies with respect to the specified securities allotted under GSO to the Issuer from the special bank account.
16. **Surplus in Bank Account:** Any monies left in the special bank account after remittance of monies to the issuer and deduction of expenses incurred by the SA for the stabilisation process shall be **transferred to the Investor Protection and Education Fund** established by the Board and the special bank account shall be closed soon thereafter.
17. **Report:** The stabilising agent shall submit a report to the stock exchange on a daily basis during the stabilisation period and a final report (Sch XII) to the Board.
18. **Maintenance of Register:** The Stabilising Agent shall maintain a register for a period of at least 3 years from the date of the end of the stabilisation period and such register shall contain the following particulars –
 - The **names of the promoters or pre-issue shareholders** from whom the specified securities were borrowed and the number of specified securities borrowed from each of them;
 - The **price, date and time** in respect of each transaction effected in the course of the stabilisation process; and
 - The **details of allotment** made by the issuer on expiry of the stabilisation process

38. State the regulations with respect to opening of an Issue? [R – 11]

1. **Time Limit under Companies Act, 1956 [Sec. 60(4)]:** No prospectus shall be issued more than 90 days after the date on which a copy thereof is delivered for registration to ROC. If a prospectus is so issued, it shall be deemed to be a prospectus a copy of which has not been delivered to the Registrar.
2. **Time Limit under SEBI:** Subject to the above provision under the Companies Act, a public issue or rights issue may be opened as follows –

Nature	Time Limit
General Issue – • Board Issued Observations on draft offer document filed	within 12 months from the date of issuance of the observations by the Board
• Board has not issued any observations	Within 3 months after expiry of the period stipulated for making observation (i.e. 30 days from date of filing draft prospectus)

Fast Track Issue	The issue shall open within the period stipulated under the Companies Act [Sec. 60(4)]
Shelf Prospectus	The first issue may be opened within 3 months of issuance of observations by the Board

3. **Filing of Offer Document and Updation of Changes:** The Issuer shall, before registering the Red Herring Prospectus (in case of a book built issue) or prospectus (in case of a Fixed Price issue) with the ROC or filing the letter of offer with the DSE, as the case may be, file with the Board through the LMB, an updated offer document highlighting all changes made in the offer document along with the applicable fees (Sch IV).

39. State the general guidelines w.r.t Public Issue under SEBI (ICDR) Regulations, 2009

1. Period for which subscription shall be kept open [R – 46]:

A public issue shall be kept open for –

Minimum Days	Maximum Days
3 Working Days	10 Working Days, including the period during which the issue is kept open in case of revision in price band.

Book Building Process: In case the price band in a public issue is made through the book building process is revised, the bidding (issue) period disclosed in the red herring prospectus shall be extended for a minimum period of 3 working days, however the total bidding period shall not exceed 10 working days.

2. Pre-Issue Advertisement (R – 47):

(a) **When?** The Issuer shall, after registering the Red Herring Prospectus (in case of a book built issue) or Prospectus (in case of fixed price issue) with the Registrar of Companies, make a pre-issue advertisement

(b) **Where?**

- One English national daily newspaper with wide circulation
- One Hindi national daily newspaper with wide circulation and
- One Regional language newspaper with wide circulation at the place where the registered office of the issuer is situated.

(c) **Format:** Schedule XIII – Part A.

3. Issue Opening and Issue Closing Advertisements [R – 48]:

It shall be in the formats specified in Sch XIII – Part B/C.

4. Minimum Application Value [R – 49]:

(a) **Minimum Application Size:** The Issuer shall stipulate in the offer document, the minimum application size in terms of number of specified securities which shall fall within the range of minimum application value of Rs.5,000 to Rs.7,000.

(b) **Illustration:** Assuming an issue is being made at a price of ₹ 420 per equity share. In this case, the issuer in consultation with the lead merchant banker can determine the minimum application lot within the range of 12 – 16 equity shares (in value terms between Rs. 5,000 – Rs. 7,000), as explained hereunder:

Option	I	II	III	IV	V
Lot Size @ Rs.420/- per share	12	13	14	15	16
Application Value for 1 Lot	₹ 5,040	₹ 5,460	₹ 5,880	₹ 6,300	₹ 6,720
Application Value for 2 Lots	₹ 10,080	₹ 10,920	₹ 11,760	₹ 12,600	₹ 13,440
Application Value for 4 Lots	₹ 20,160	₹ 21,840	₹ 23,520	₹ 25,200	₹ 26,880
Application Value for 8 Lots	₹ 40,320	₹ 43,680	₹ 47,040	₹ 50,400	₹ 53,760
Application Value for 10 Lots	₹ 50,400	₹ 54,600	₹ 58,800	₹ 63,000	₹ 67,200

Where the issuer in consultation with the lead merchant banker decides to fix the minimum application/bid size as 15 (Option IV), necessary disclosures to the effect that the applicant can make an application for 15 shares and in multiples thereof shall be made in the offer document.

Note: “Minimum Application Value” shall be with reference to the Issue Price of the specified securities and not with reference to the amount payable on application.

(c) **Minimum sum payable on application:** Not be less than 25% of the issue price. However, in case of an offer for sale, the issue price payable for each specified security shall be brought in at the time of application itself.

5. Allotment procedure [R – 50]:

Particulars	Condition
Applicants other than Anchor Investors	(a) Allotment shall be made on proportionate basis within the specified investor categories and the number of securities allotted shall be rounded off to the nearest integer. (b) Allotment shall be subject to a minimum application size as determined and disclosed by the Issuer.
Employees and in case of a new issuer, persons who are in the permanent and full time employment of the promoting companies excluding the promoters and an immediate relative of the promoter of such companies (R – 42)	The value of specified securities allotted shall not exceed Rs. 2 lakhs.

Note: Anchor Investor means a Qualified Institutional Buyer who makes an application for a value of Rs.10 Crores or more in a public issue made through the book building process.

6. Basis of Allotment [R – 50]: The Executive Director or Managing Director of the DSE along with the post issue Lead Merchant Bankers and Registrars to the issue shall ensure that the basis of allotment is finalised in a fair and proper manner in accordance with the allotment procedure [Sch XV].

7. Utilization of Subscription Money: The post issue lead merchant banker shall ensure that moneys received in respect of the issue are release to the issuer in compliance with the provisions of section 73 of the Companies Act, 1956 (i.e after permission for listing obtained from the Recognized Stock Exchange).

40. Vishnu Ltd made a Public Issue of 10 Crores Equity Shares at an Issue Price of Rs.600/- Per Share. Specified Securities on offer to Retail Individual Investors category is 3.5 Crores. The Issue is Oversubscribed 4 times and whereas the RII category is oversubscribed 8 times. The Issuer has decided to fix the minimum application / bid size as 9 (falling within the range of Rs.5,000 – Rs.7,000) and in multiples thereof. The following RII's has applied for the securities mentioned below against the respective names, calculate the basis of allotment on proportionate basis that the RII's are entitled to.

Amar	– 81 Securities
Babu	– 72 Securities
Chandru	– 45 Securities

As per allotment procedure, the allotment to Retail Individual Investors shall be on proportionate basis i.e., at $1/8^{\text{th}}$ of the total number of specified securities applied for. The actual entitlement shall be as follows –

S.No	Name	Securities applied (No's)	Securities eligible to be allotted on proportionate basis (No's)
1	Amar	81	$81 \div 8 = 10.125$ specified securities rounded off to 10 specified securities.
2	Babu	72	$72 \div 8 = 9$ specified securities
3	Chandru	45	$45 \div 8 = 5.625$ specified securities Application liable to be rejected (as the entitlement is less than the minimum application size).

However, the successful applicants out of the total applicants shall be determined by drawal of lots.

CHAPTER IV – RIGHTS ISSUE

41. State the procedure for Rights Issue of Shares by a Listed Company

Steps	Particulars	Description
1	Determination of Rights Issue Price [R – 54(5)]	The Rights Issue price shall be decided before determining the record date which shall be determined in consultation with the designated Stock Exchange.
2	Identification of Record Date [R – 52]	(a) 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. (b) The Issuer shall not withdraw rights issue after announcement of the record date.

		(c) 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 RSE for a period of 12 months from the record date announced above. (d) However, 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.
3	Option to Convertibles [R – 53]	(a) No Issuer shall make a rights issue of equity shares if it has outstanding fully or partly Convertible Debt Instruments at the time of making rights issue, unless it has made reservation of equity shares of the same class in favour of the holders of such outstanding convertible debt instruments in proportion to the convertible part thereof. (b) The Equity Shares reserved for the holders of fully or partially convertible debt instruments shall be issued at the time of conversion of such convertible debt instruments on the same terms on which the equity shares offered in the rights issue were issued.
4	Despatch of Letter of Offer / Abridged Letter of Offer [R – 54(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. However, 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.
5	Placing of Pre-Issue Advertisement [R – 55]	The Issuer shall place a pre-issue advertisement for rights issue disclosing the specified item in at least one English national daily newspaper with wide circulation, one Hindi national daily newspaper with wide circulation and one regional language daily newspaper with wide circulation at the place where registered office of the issuer is situated, at least 3 days before the date of opening of the issue.
6	Application by Shareholders [R – 54(2)/(3)/(4)]	(a) The Shareholders who have not received the application form may apply in writing on a plain paper, along with the requisite application money. (b) The shareholders making application otherwise than on the application form shall not renounce their rights and shall not utilise the application form for any purpose including renunciation even if it is received subsequently. (c) Where any shareholder makes an application on application form as well as on plain paper, the application is liable to be rejected.
7	Period kept open for subscription [R – 54(6)]	Minimum Days: 15 Days Maximum Days: 30 Days
8	Basis of Allotment [R – 55A]	The Issuer shall decide upon the basis of allotment and can also make reservation for its employees alongwith rights issue subject to the condition that value of allotment to any employee shall not exceed Rs.2 Lakhs .
9	Utilisation of Funds [R – 56]	The issuer shall utilize the funds collected in rights issue after the finalization of the basis of allotment.

42. What are the matters which are required to be stated in the Pre-Issue advertisement placed by the Issuer for Rights Issue?

1. The date of completion of despatch of abridged letter of offer and the application form;
2. The centres other than registered office of the issuer where the shareholders or the persons entitled to receive the rights entitlements may obtain duplicate copies of the application forms in case they do not receive the application form within a reasonable time after opening of the rights issue;
3. A statement that if the shareholders entitled to receive the rights entitlements have neither received the original application forms nor they are in a position to obtain the duplicate forms, they may make application in writing on a plain paper to subscribe to the rights issue;
4. A format to enable the Shareholders entitled to apply against their rights entitlements, to make the application on a plain paper specifying therein necessary particulars such as name, address, ratio of rights issue, issue price, number of equity shares held, ledger folio numbers, depository participant ID, client ID, number of equity shares entitled and applied for, additional Shares if any, amount to be paid along with application, and particulars of cheque, etc. to be drawn in favour of the issuer's account;
5. A statement that the applications can be directly sent by the shareholders entitled to apply against rights entitlements through registered post together with the application moneys to the issuer's designated official at the address given in the advertisement;
6. A statement to the effect that if the shareholder makes an application on plain paper and also on application form both his applications shall be liable to be rejected at the option of the issuer.

CHAPTER V – MANNER OF DISCLOSURE IN THE OFFER DOCUMENT

43. Explain the manner of disclosure in the offer document. [R – 57]

The offer document shall contain all material disclosures which are true and adequate so as to enable the applicants to take an informed investment decision.

Particulars	Applicable Disclosure
Red-Herring Prospectus, Shelf Prospectus and Prospectus	Schedule II of the Companies Act, 1956 and the disclosures specified in Part A of Schedule VIII, subject to the provisions of Parts B and C thereof.
Letter of Offer	Part E of Schedule VIII.

44. Explain the manner of disclosure in the abridged offer document. [R – 58]

1. **Disclosure Requirement:** The abridged prospectus and abridged letter of offer shall not contain any matter extraneous to the contents of the offer document. The matters to be disclosed are as follows -

Particulars	Applicable Disclosure
Abridged Prospectus	Memorandum of disclosures as prescribed u/S 56(3) of the Companies Act, 1956 and additional disclosures as specified in Part D of Schedule VIII.
Abridged Letter of Offer	Part F of Schedule VIII.

2. **Application form to accompany abridged Offer document:** Every application form including ASBA form distributed by the issuer or any other person in relation to an issue shall be accompanied by a copy of the abridged prospectus or abridged letter of offer, as the case may be. In all public issues and rights issues, where not more than one payment option is given, the issuer shall provide the facility of ASBA in accordance with the procedure and eligibility criteria specified by the Board.
3. **ASBA (Application supported by Blocked Amount):** ASBA means an application for subscribing to a public issue or rights issue, along with an authorisation to **Self Certified Syndicate Bank** to block the application money in a bank account. Self Certified Syndicate Bank” means a banker to an issue registered with the Board, which offers the facility of ASBA.

CHAPTER VI – GENERAL OBLIGATION OF ISSUER AND INTERMEDIARIES WITH RESPECT TO PUBLIC ISSUE AND RIGHTS ISSUE

45. Explain the general obligation of the Issuer and Intermediaries with respect to Public and Rights Issue.

Particulars	Description
Prohibition on payment of incentives [R – 59]	No person connected with the issue including a person connected with the distribution shall offer any incentive, whether direct or indirect, in any manner, whether in cash or kind or services or otherwise to any person for making an application for allotment of specified securities except fees or commission for services rendered in relation to the issue.
Only Factual information in Public communications, publicity materials, advertisements and research reports. [R – 60]	Any public communication including advertisement and publicity material issued by the issuer or research report made by the issuer or any intermediary concerned with the issue or their associates shall contain only factual information and shall not contain projections, estimates, conjectures, etc. or any matter extraneous to the contents of the offer document. (See question below)
Copies of offer documents to be available to public [R – 61]	- The Issuer and Lead Merchant Bankers shall ensure that the contents of offer documents hosted on the websites as required in these regulations are the same as that of their printed versions as filed with the Registrar of Companies, Board and the Stock Exchanges. - The Lead Merchant Bankers and the Recognised Stock Exchange shall provide copies of the draft offer document and final offer document to the public as and when requested. - The Lead Merchant Bankers or the Recognised Stock Exchange may charge a reasonable sum for providing the copy of the offer document.

Particulars	Description
Redressal of investor grievances [R – 62]	The Post – Issue Lead Merchant Bankers shall actively associate himself with Post – Issue activities such as allotment, refund, despatch and giving instructions to syndicate members, Self-Certified Syndicate Banks and other intermediaries and shall regularly monitor redressal of investor grievances arising therefrom.
Appointment of Compliance Officer [R – 63]	The Issuer shall appoint a compliance officer who shall be responsible for monitoring the compliance of the securities laws and for redressal of investors' grievances. Meaning of Securities Laws: The term “securities laws” means the Companies Act, 1956, the Act, the Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996 and the rules and regulations made thereunder and the regulations, general or special orders, guidelines or circulars made or issued by the Board.
Due diligence [R – 64]	- The Lead Merchant Bankers shall exercise due diligence and satisfy himself about all the aspects of the issue including the veracity and adequacy of disclosure in the offer documents. - The lead merchant bankers shall call upon the issuer, its promoters or directors or in case of an offer for sale, the selling shareholders, to fulfil their obligations as disclosed by them in the offer document and as required in terms of these Regulations. - The post-issue merchant banker shall continue to be responsible for post-issue activities till the subscribers have received the securities certificates, credit to their demat account or refund of application moneys and the listing agreement is entered into by the issuer with the stock exchange and listing/trading permission is obtained. - The responsibility of the lead merchant banker shall continue even after the completion of issue process.
Post–Issue reports [R – 65]	The Lead Merchant Banker shall submit post-issue reports to the Board as follows – - Initial post issue report as specified in Parts A and B of Schedule XVI, within 3 days of closure of the issue; - Final post issue report as specified in Parts C and D of Schedule XVI, within 15 days of the date of finalisation of basis of allotment or within fifteen days of refund of money in case of failure of issue. - The Lead Merchant Banker shall submit a due diligence certificate as per the format specified in Form G of Schedule VI, along with the final post issue report.
Post – Issue Advertisements [R – 66]	The Post Issue Merchant Banker shall ensure that advertisement giving details relating to over subscription, basis of allotment, number, value and percentage of all applications including ASBA, number, value and percentage of successful allottees for all applications including ASBA, date of completion of despatch of refund orders or instructions to Self-Certified Syndicate Banks by the Registrar, date of despatch of certificates and date of filing of listing application, etc. is released within ten days from the date of completion of the various activities in at least one English national daily newspaper with wide circulation, one Hindi national daily newspaper with wide circulation and one regional language daily newspaper with wide circulation at the place where registered office of the issuer is situated. The post-issue merchant banker shall ensure that issuer, advisors, brokers or any other entity connected with the issue do not publish any advertisement stating that issue has been over subscribed or indicating investors' response to the issue, during the period when the public issue is still open for subscription by the public.
Co-ordination with Intermediaries [R – 67]	- The Post Issue merchant banker shall maintain close co-ordination with the registrars to the issue and arrange to depute its officers to the offices of various intermediaries at regular intervals after the closure of the issue to monitor the flow of applications from collecting bank branches and/or Self Certified Syndicate Banks, processing of the applications including application form for ASBA and other matters till the basis of allotment is finalised, despatch of security certificates and refund orders are completed and securities are listed. - Any act of omission or commission on the part of any of the intermediaries noticed during such visits shall be duly reported to the Board. - In case there is a devolvement on underwriters, the merchant banker shall ensure that the notice for devolvement containing the obligation of the under-writers is issued within a period of ten days from the date of closure of the issue. - In case of under subscribed issues, the merchant banker shall furnish information in respect of underwriters who have failed to meet their underwriting devolvement to the Board in the format specified in Schedule XVII.

Particulars	Description
	The post-issue merchant banker shall confirm to the bankers to the issue by way of copies of listing and trading approvals that all formalities in connection with the issue have been completed and that the banker is free to release the money to the issuer or release the money for refund in case of failure of the issue.
Audited Financial Statements in the Offer Document [R – 68]	The merchant banker shall ensure that the information contained in the offer document and the particulars as per audited financial statements in the offer document are not more than 6 months old from the issue opening date.
Despatch of Documents [R – 69(1)]	The post-issue merchant banker shall ensure that the despatch of refund orders, allotment letters and share certificates is done by way of registered post or certificate of posting, as may be applicable.
Payment of Interest for belated refund [R – 69(2)]	The post-issue merchant banker shall ensure payment of interest to the applicants for delayed despatch of allotment letters, refund orders, etc. as per the disclosure made in the offer document.
Extended Subscription Period [R – 69(3)]	In case of absence of definite information about subscription figures, the issue shall be kept open for the required number of days to avoid any dispute, at a later date, by the underwriters in respect of their liability.
Reporting to RSE [R – 69(3)]	The Issuer shall ensure that transactions in securities by the promoter and promoter group during the period between the date of registering the offer document with the Registrar of Companies or filing the letter of offer with the designated stock exchange, as the case may be and the date of closure of the issue shall be reported to the recognised stock exchanges where the specified securities of the issuer are listed, within 24 hours of the transactions.

46. Explain the general guidelines with respect to Public Communication and Publicity Material. [R – 60]

1. Compliance at different time period during Issue:

Time Periods	Requirement
All public communications and publicity material issued or published in any media during the period commencing from the date of the meeting of the board of directors of the issuer in which the public issue or rights issue is approved till the date of filing draft offer document with the Board.	Generally: It shall be consistent with its past practices. If not consistent: It shall be prominently displayed or announced that the issuer is proposing to make a public or rights issue of specified securities in the near future and is in the process of filing a draft offer document with the Board.
All public communications and publicity material issued or published in any media during the period commencing from the date of filing draft offer document with the Board till the date of allotment of securities offered in the Issue	It shall prominently disclose that the Issuer is proposing to make a public issue or rights issue of the specified securities and has filed - a draft offer document with the Board or - has filed the red herring prospectus or prospectus with the Registrar of Companies or the letter of offer with the designated stock exchange, as the case may be. The above must be made available on the website of the Board, lead merchant bankers or lead book runners.
When issuing public notices in all the newspapers in which the issuer had issued pre-issue advertisement under regulation 47 or regulation 55, as the case may be intimating material developments which takes place during the following period - in case of public issue, between the date of registering final prospectus or the red herring prospectus, as the case may be, with the Registrar of Companies, and the date of allotment of specified securities - in case of a rights issue, between the date of filing the letter of offer with the designated stock exchange and the date of allotment of the specified securities.	The issuer shall make prompt, true and fair disclosure of all material developments relating to its business and securities and also relating to the business and securities of its subsidiaries, group companies, etc., which may have a material effect on the issuer.
At any conference or at any other time	The issuer shall not, directly or indirectly release any material or information which is not contained in the offer document.

2. **Meaning of “Public Communication or Publicity Material”:** It includes corporate, product and issue advertisements of the issuer, interviews by its Promoters, Directors, duly authorized employees or representatives of the issuer, documentaries about the issuer or its promoters, periodical reports and press releases.
3. **Availability of Material:** In respect of all public communications, issue advertisements and publicity materials, the issuer shall obtain approval from the lead merchant bankers responsible for marketing the issue and shall also make copies of all issue related materials available with the lead merchant bankers at least till the allotment is completed.
4. **General Conditions:** Any advertisement or research report issued or caused to be issued by an issuer, any intermediary concerned with the issue or their associates shall comply with the following -
 - (a) It shall be truthful, fair and shall not be manipulative or deceptive or distorted and it shall not contain any statement, promise or forecast which is untrue or **misleading**;
 - (b) If it reproduces or purports to reproduce any information contained in an offer document, it shall reproduce such information in full and disclose all relevant facts and not be restricted to select extracts relating to that information;
 - (c) It shall be set forth in a clear, concise and understandable language;
 - (d) It shall not include any issue slogans or brand names for the issue except the normal commercial name of the issuer or commercial brand names of its products already in use;
 - (e) If it presents any financial data, data for the past three years shall also be included along with particulars relating to sales, gross profit, net profit, share capital, reserves, earnings per share, dividends and the book values;
 - (f) No advertisement shall use extensive technical, legal terminology or complex language and excessive details which may distract the investor;
 - (g) No issue advertisement shall contain statements which promise or guarantee rapid increase in profits;
 - (h) No issue advertisement shall display models, celebrities, fictional characters, landmarks or caricatures or the likes;
 - (i) No issue advertisement shall appear in the form of crawlers (the advertisements which run simultaneously with the programme in a narrow strip at the bottom of the television screen) on television;
 - (j) In any issue advertisement on television screen, the risk factors shall not be scrolled on the television screen and the advertisement shall advise the viewers to refer to the red herring prospectus or other offer document for details;
 - (k) No issue advertisement shall contain slogans, expletives or non-factual and unsubstantiated titles;
 - (l) If an advertisement or research report contains highlights, it shall also contain risk factors with equal importance in all respects including print size of not less than point seven size;
 - (m) An issue advertisement displayed on a billboard shall not contain information other than that specified in Parts A, B and C of Schedule XIII, as applicable;
 - (n) An issue advertisement which contains highlights or information other than the details contained in the format as specified in Parts A and B of Schedule XIII shall contain risk factors.
5. **Misleading advertisement:** An issue advertisement shall be considered to be misleading, if it contains:
 - Statements made about the performance or activities of the issuer without necessary explanatory or qualifying statements, which may give an exaggerated picture of such performance or activities.
 - An inaccurate portrayal of past performance or its portrayal in a manner which implies that past gains or income will be repeated in the future.
6. No advertisement shall be issued giving any impression that the issue has been fully subscribed or oversubscribed during the period the issue is open for subscription.
7. An announcement regarding closure of issue shall be made only after the lead merchant banker(s) is satisfied that at least ninety per cent of the offer through offer document has been subscribed and a certificate has been obtained to that effect from the registrar to the issue. However, such announcement shall not be made before the date on which the issue is to be closed.
8. No advertisement or distribution material with respect to the issue shall contain any offer of incentives, whether direct or indirect, in any manner, whether in cash or kind or services or otherwise.
9. No product advertisement shall contain any reference, directly or indirectly, to the performance of the issuer during the period commencing from the date of the resolution of the board of directors of the issuer approving the public issue or rights issue till the date of allotment of specified securities offered in such issue.
10. A research report may be prepared only on the basis of information, disclosed to the public by the issuer by updating the offer document or otherwise.
11. No selective or additional information or information which is extraneous to the information disclosed to the public through the offer document or otherwise, shall be given by the issuer or any member of the issue management team or syndicate to any particular section of the investors or to any research analyst in any manner whatsoever, including at road shows, presentations, in research or sales reports or at bidding centres.

12. The merchant bankers shall submit a compliance certificate in the format specified in **Part D of Schedule XIII**, for the period between the date of filing the draft offer document with the Board and the date of closure of the issue, in respect of news reports appearing in any of the following media -
- Newspapers mentioned in regulation 9(3);
 - major business magazines;
 - Print and electronic media controlled by a media group where the media group has a private treaty/shareholders' agreement with the issuer or promoters of the issuer.

CHAPTER VII – PREFERENTIAL ISSUE

47. Write short notes on Applicability of Chapter VII – Regulation for Preferential Issues.

RTP

1. **Preferential Issues:** U/s 81 & 81(1A) of the Companies Act, where the Company goes in for further issue of capital, it shall be first offered to the existing Shareholders. Where the Shares are not subscribed by them, then the Company may issue to any other preferred person. Such Shares so allotted on preference basis is termed as "Preferential Allotment".
2. **Applicability:** Preferential Issue of Equity Shares / Fully Convertible Debentures (FCDs) / Partly Convertible Debentures (PCDs) or any other financial instruments which would be converted into or exchanged with Equity Shares at a later date, by Listed Companies whose Equity Share Capital is listed on any Stock Exchange, to any **select group of persons** u/s 81(1A) of the Companies Act on **private placement basis** shall be governed by this.
3. **Not Applicable: Shares allotted**

Nature of Exemption	Description
From all provision of this chapter	Pursuant to conversion of loan or option attached to convertible debt instruments in terms of Section 81(3)/(4) of the Companies Act, 1956
From all provision of this chapter	Pursuant to a scheme approved by a High Court u/s 391 to 394 of the Companies Act, 1956
From all provision other than lock-in period of this chapter	Equity Shares allotted under rehabilitation scheme approved by the Board of Industrial and Financial Reconstruction under the Sick Industrial Companies (Special Provisions) Act, 1985.
From Pricing and Lock-In	Equity shares allotted to any financial institution within the meaning of Section 2(h)(ii)(ia) of the Recovery of Debts due to Banks and Financial Institutions Act, 1993.
From Disclosure and Pricing	A preferential issue of equity shares and compulsorily convertible debt instruments, whether fully or partly, where the Board has granted relaxation to the issuer in terms of regulation 29A of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, if adequate disclosures about the plan and process proposed to be followed for identifying the allottees are given in the explanatory statement to notice for the general meeting of shareholders.

48. Explain the conditions for Preferential Issue? [R – 72]

A Listed Issuer may make a Preferential Issue of specified securities, if –

Condition	Description
Special Resolution	A Special Resolution has been passed by its Shareholders
Dematerialised Form	All the equity shares, if any, held by the proposed allottees in the issuer are in dematerialised form
Compliance with Listing Conditions	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
PAN of Allottees	The issuer has obtained the Permanent Account Number of the proposed allottees.
Allottee not sold the shares in preceding 6 months	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. However, 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 SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 to such preferential allotment.
Tenure of Convertibles	The tenure of convertible securities of the Issuer shall not exceed 18 months from the date of their allotment.

Note: Where any person belonging to promoter(s) or the promoter group has sold his equity shares in the issuer during the 6 months preceding the relevant date, the promoter(s) and promoter group shall be ineligible for allotment of specified securities on preferential basis.

Where any person belonging to promoter(s) 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 one year from –

- the date of expiry of the tenure of the warrants due to non-exercise of the option to convert; or
- the date of cancellation of the warrants, as the case may be.

49. Explain the SEBI Guidelines in respect of Pricing of Preferential Issues.

RTP

1. **Pricing of Shares:** The **minimum** issue price for the Preferential Issue is determined as under –

Where Equity Shares of a Company have been listed on a Stock Exchange	Minimum Issue Price = Higher of the following
A. for a period of 6 months or more as on the relevant date	Average of the weekly high and low of the closing prices of the related Shares quoted on the Stock Exchange – (a) during the 6 months preceding the relevant date , or (b) during the 2 weeks preceding the relevant date .
B. for a period of less than 6 months as on the relevant date	(a) Price at which Shares were issued by the Company in its IPO, or (b) Value per share arrived at in a scheme of arrangement u/s 391 to 394 of the Companies Act, pursuant to which the Shares of the Company were listed, (c) Average of the weekly high and low of the closing prices of the related Shares quoted on the Stock Exchange – • during the period Shares have been listed preceding the relevant date, or • during the 2 weeks preceding the relevant date. Note: On completing a period of 6 months of listing, the Company shall re-compute the price as per (A) above, and the difference shall be paid by the Allottees to the Company, if such re-computed price is less than the earlier Issue Price.

Note:

- “**Relevant Date**” means the date **30 days prior** to the date on which the meeting of General Body of Shareholders is held, u/s 81(1A) of the Companies Act, to consider the proposed issue.
- Where Shares are issued on preferential basis, pursuant to a scheme approved under the Corporate Debt Restructuring framework of RBI, the date of approval of the Corporate Debt Restructuring package shall be the relevant date.
- In case of preferential issue of convertible securities, either the relevant date referred to in clause (a) of this regulation or a date thirty days prior to the date on which the holders of the convertible securities become entitled to apply for the Equity Shares.
- Any preferential issue of specified securities, to Qualified Institutional Buyers not exceeding 5 in number, shall be made at a price not less than the average of the weekly high and low of the closing prices of the related equity shares quoted on a recognised stock exchange during the two weeks preceding the relevant date.
- ‘Stock Exchange’ means any of the Recognised Stock Exchanges in which the equity shares are listed and in which the highest trading volume in respect of the equity shares of the issuer has been recorded during the preceding 6 months prior to the relevant date.

2. **Payment of Consideration:**

- Full consideration of specified securities other than warrants issued under this Chapter shall be paid by the allottees at the time of allotment of such specified securities. However that in case of a preferential issue of specified securities pursuant to a scheme of corporate debt restructuring as per the corporate debt restructuring framework specified by the Reserve Bank of India, the allottee may pay the consideration in terms of such scheme.
- An amount equivalent to **at least 25%** of the consideration as determined above shall be paid against each warrant on the date of allotment of warrants.
- The **balance 75%** of the consideration shall be paid at the time of allotment of equity shares pursuant to exercise of option against each such warrant by the warrant holder.
- In case the warrant holder does not exercise the option to take equity shares against any of the warrants held by him, the consideration paid in respect of such warrant shall be forfeited by the Issuer.

3. **Pricing of Shares on conversion:** Where PCDs / FCDs / other convertible instruments are issued on a preferential basis, providing for the Issuer to allot Shares at a future date, the Issuer shall determine the price at which the Shares could be allotted, in the same manner as specified for pricing of Shares allotted in lieu of warrants as indicated above.
4. **Exclusions:** The provisions relating to Pricing of Preferential Allotment and Lock in period requirements shall **not** apply to Shares allotted to any financial institution within the meaning Sec.2(h)(ia) and 2(h)(ii) of the Recovery of Debts due to Banks and Financial Institutions Act, 1993.

PRACTICAL QUESTION M 08	MGR Ltd wants to issue certain Shares on preferential basis and has sought your advice in respect of pricing the Shares for such issue. State the Guidelines issued by SEBI in respect of pricing of the issue of Shares on a preferential basis.	Hint / Answer: Refer Q.No 51 above
PRACTICAL QUESTION N 99	Explain briefly the Guidelines issued by SEBI to prevent the unscrupulous Promoters from making preferential allotment of Shares at prices favourable to themselves and against the interest of other Shareholders.	Hint / Answer: Overview of entire Chapter VII
PRACTICAL QUESTION N 96	Explain the manner in which the SEBI regulates the pricing of the issue of Shares on preferential basis arising out of warrants (i.e. rights of holders of warrants to apply for allotment of Shares).	Hint / Answer: Refer Point 2 above

50. Describe the guidelines in respect of Lock-In Period for Preferential Allotment.

RTP

1. Lock-In Period Requirements:

- (a) **Promoters:** The instruments allotted on a preferential basis to Promoter / Promoter Group shall be subject to lock-in of 3 years from the date of their allotment. In any case, not more than 20% of the Total Capital of the Company, **including** Capital brought in by way of preferential issue, shall be subject to lock-in of 3 years from the date of allotment.
- (b) **Other persons / Additional Lock-In for Promoters:** In addition to 3 year lock-in requirements for instruments allotted on preferential basis to Promoters / Promoter Group, the instruments allotted on preferential basis to any person including Promoters / Promoters Group shall be locked-in for a period of 1 year from the date of their allotment.
- (c) **RBI Approved Scheme:** The Lock-in period in respect of Shares issued on preferential basis, consequent to a scheme approved by RBI under Corporate Debt Restructuring framework, shall commence from the date of allotment and shall continue for 1 year. In case of allotment of partly paid Shares, the lock-in shall commence from the date of allotment and shall continue for 1 year from the date when Shares become fully paid up.
- (d) **Extension of Lock in Period:** In case of an Issuer Company, whose securities are listed for a period of less than 6 months, the lock in period shall be extended (over and above the period as in (a) to (c)) till such time the Company receives the additional allotment money from such allottee (upon price re-computation).
- (e) **Pre-Preferential Shareholding:** Where the Shares / Warrants / Convertible Instruments are issued on preferential basis, the entire pre-preferential allotment shareholding of **such allottees** shall be under lock-in from the relevant date upto a period of **6 months** from the date of preferential allotment.

2. **Reduction in Lock-In Period for Convertibles:** The lock-in on Shares acquired by conversion of the convertible instrument / exercise of warrants, shall be **reduced** to the extent the convertible instrument / warrants have already been locked-in.

3. **Transfer among Promoters / Group permissible:** The locked-in Shares / instruments may be transferred to and amongst Promoter / Promoter Group or to a new Promoter(s) or person(s) in control of the Company, subject to

continuation of lock-in in the hands of Transferee(s) for the remaining period and compliance with SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 1997.

4. Explanations:

- **Total Capital:** "Total Capital" of the Company shall mean – (a) Equity Share Capital issued by way of Public / Rights Issue including Equity Shares emerging at a later date out of any convertible securities / exercise of warrants, **and** (b) Equity Shares or any other security convertible at a later date into Equity issued a preferential basis in favour of Promoter / Promoter Groups.
- For computing **20 % of Total Capital** of the Company, the amount of Minimum Promoters Contribution held and locked-in in the past as per guidelines shall be taken into account. However, the Minimum Promoters Contribution shall not again be put under fresh lock-in, even though it is considered for computing the requirement of 20% of Total Capital of the Company, in case the said Minimum Promoters Contribution is **free of lock-in** at the time of the preferential issue.

5. **Transferability of Locked-in specified securities and warrants issued on preferential basis:** Subject to the provisions of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, specified securities held by promoters and locked-in may be transferred among promoters or promoter group or to a new promoter or persons in control of the issuer. However that lock-in on such specified securities shall continue for the remaining period with the transferee.

PRACTICAL QUESTION M 05/M 08	Excel Ltd, a Public Limited Company listed with the Mumbai Stock Exchange, wants to make an issue of Equity Shares on preferential basis, pursuant to a scheme approved by the Corporate Debt Restructuring Framework specified by RBI, to various persons as may be selected by the Board of Directors of the Company. Following information relevant to the preferential issue is available – • Total Number of Equity Shares to be issued: 50 Lakh Equity Shares of Rs.10 each, out of which 30 Lakh Equity Shares will be allotted on 30th June 2008 as fully paid up and the balance 20 Lakh Equity Shares shall be allotted on the same date but paid upto Rs.5 each, and the balance of Rs.5 shall be called upon at a later date and shall be paid up on 30th Nov, 2008. • Out of the proposed allottees, some persons are holding their Shares in Excel Ltd in physical form, and not in dematerialized form and some persons had sold their entire shareholding in Excel Ltd in January 2008. • The meeting of the general body of Shareholders for approving the preferential issue was held on 15th March 2008. From the above information, answer the following queries based on SEBI Guidelines – (a) What would be the lock-in period for the Shares allotted on preferential basis? (b) Who are the persons not entitled for allotment of Shares on preferential basis?	Hint / Answer: Lock-in Period: Refer Q.No. 52 above. Ineligible Persons: Refer Q.No. 49 above
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51. Describe the disclosure requirements in respect of Preferential Issues.

RTP

1. **Listing Conditions to be followed:** A Listed Company shall not make any preferential issue of Equity Shares, FCD's, PCD's or any other instrument which may be converted into or exchanged with Equity Shares at a latter date, if the same is not in compliance with the conditions for continuous listing.
2. **Contents of Notice:** The Explanatory Statement u/s 173, to the notice for the General Meeting shall contain –
 - (a) Object(s) of the issue through preferential offer,
 - (b) The Proposal of Promoters / Directors / Key Management Persons to subscribe to the offer,
 - (c) Shareholding pattern before and after the offer,
 - (d) Proposed time within which the allotment shall be complete,
 - (e) Identity of the proposed allottees and the percentage of post-preferential Issue Capital that may be held by them and resultant change in control.
 - (f) An undertaking, in case of a Company whose Shares have been Listed on a Stock Exchange for a period of less than 6 months and making a preferential allotment (re-computing the issue price after the expiry of 6 months, refunding of excess money received resulting from such re-computation, extension of lock-in period in case of non payment of allotment money on expiry of 6 months, etc).

3. **CA Certificate:** The Issuer shall place a copy of the certificate of its statutory auditor before the general meeting of the shareholders, considering the proposed preferential issue, certifying that the issue is being made in accordance with the requirements of these regulations.
4. **Allotment for Consideration other than Cash:** Where specified securities are issued on a preferential basis to promoters, their relatives, associates and related entities for consideration other than cash, the valuation of the assets in consideration for which the equity shares are issued shall be done by an independent qualified valuer, which shall be submitted to the recognised stock exchanges where the equity shares of the issuer are listed. However, that if the recognised stock exchange is not satisfied with the appropriateness of the valuation, it may get the valuation done by any other valuer and for this purpose it may obtain any information, as deemed necessary, from the issuer. [The term 'Valuer' has the same meaning as is assigned to it under 2(1)(r) of the SEBI (Issue of Sweat Equity) Regulations, 2002]
5. **Relevant Date:** The special resolution shall specify the relevant date on the basis of which price of the equity shares to be allotted on Conversion or Exchange of convertible securities shall be calculated.

52. State the requirement w.r.t to passing of Special Resolution in respect of Preferential Issues.

Particulars	Time Limit
Time Limit for Allotment – General	Allotment pursuant to the special resolution shall be completed within a period of 15 days from the date of passing of such resolution.
Time Limit for Allotment – Specific Categories	
where any application for exemption from the applicability of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 or any approval or permission by any regulatory authority or the Central Government for allotment is pending	The period of 15 days shall be counted from the date of order on such application or the date of approval or permission, as the case may be.
Where the Board has granted relaxation to the issuer in terms of regulation 29A of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997	The preferential issue of equity shares and compulsorily convertible debt instruments, whether fully or partly, shall be made by it within such time as may be specified by the Board in its order granting the relaxation.
Allotment of specified securities on preferential basis pursuant to a scheme of corporate debt restructuring as per the corporate debt restructuring framework specified by the RBI.	requirement of allotment within 15 days shall not apply

Note: If the allotment of specified securities is not completed within fifteen days from the date of special resolution, a fresh special resolution shall be passed and the relevant date for determining the price of specified securities under this Chapter will be taken with reference to the date of latter special resolution.

Chapter VIII – QUALIFIED INSTITUTIONAL PLACEMENTS (QIP)

53. Explain the guideline for “Qualified Institutional Placements”

Particulars	Description
Applicability [R – 80]	1. Qualified Institutions Placement made by a listed issuer making eligible securities. 2. “Eligible Securities” include equity shares, non-convertible debt instruments along with warrants and convertible securities other than warrants. 3. “Qualified Institutions Placement” means allotment of eligible securities by a listed issuer to qualified institutional buyers on private placement basis.
Conditions for qualified institutions placement [R – 82]	1. A Special Resolution approving the qualified institutions placement has been passed by its shareholders 2. The equity shares of the same class, which are proposed to be allotted through qualified institutions placement or pursuant to conversion or exchange of eligible securities offered through QIP, have been listed on a RSE having nation wide trading terminal for a period of at least one year prior to the date of issuance of notice to its shareholders for convening the meeting to pass the special resolution. However, where an issuer, being a transferee-company in a scheme of merger, demerger, amalgamation or

Particulars	Description
	arrangement sanctioned by a High Court u/s 391 to 394 of the Companies Act, 1956, makes QIP, the period for which the equity shares of the same class of the transferor-company were listed on a stock exchange having nation wide trading terminals shall also be considered for the purpose of computation of the period of one year. 3. It is in compliance with the requirement of minimum public shareholding specified in the listing agreement with the stock exchange; Note 1: In the special resolution, it shall be, among other relevant matters, specified that the allotment is proposed to be made through QIP and the relevant date. Note 2: Meaning of “Equity Shares of the same class”: Meaning as assigned to them in Explanation to Rule 19(4) of the Securities Contracts (Regulation) Rules, 1957. Note 3: “Relevant Date” means: • In case of allotment of equity shares, the date of the meeting in which the board of directors of the issuer or the committee of directors duly authorised by the board of directors of the issuer decides to open the proposed issue; • In case of allotment of eligible convertible securities, either the date of the meeting in which the board of directors of the issuer or the committee of directors duly authorised by the board of directors of the issuer decides to open the issue of such convertible securities or the date on which the holders of such convertible securities become entitled to apply for the equity shares.
Appointment of Merchant Banker [R – 83]	1. A QIP shall be managed by merchant banker(s) registered with the Board who shall exercise due diligence. 2. The merchant banker shall, while seeking in-principle approval for listing of the eligible securities issued under qualified institutions placement, furnish to each stock exchange on which the same class of equity shares of the issuer are listed, a due diligence certificate stating that the eligible securities are being issued under qualified institutions placement and that the issuer complies with requirements of this Chapter.
Placement document [R – 84]	1. The qualified institutions placement shall be made on the basis of a placement document which shall contain all material information, including those specified in Schedule XVIII. 2. The placement document shall be serially numbered and copies shall be circulated only to select investors. 3. The issuer shall, while seeking in-principle approval from the recognised stock exchange, furnish a copy of the placement document, a certificate confirming compliance with the provisions of this Chapter along with any other documents required by the stock exchange. 4. The placement document shall also be placed on the website of the concerned stock exchange and of the issuer with a disclaimer to the effect that it is in connection with a qualified institutions placement and that no offer is being made to the public or to any other category of investors. 5. A copy of the placement document shall be filed with the Board for its record within 30 days of the allotment of eligible securities.
Pricing [R – 85]	1. The qualified institutions placement shall be made at a price not less than the average of the weekly high and low of the closing prices of the equity shares of the same class quoted on the stock exchange during the two weeks preceding the relevant date. 2. Where eligible securities are convertible into or exchangeable with equity shares of the issuer, the issuer shall determine the price of such equity shares allotted pursuant to such conversion or exchange taking the relevant date as decided and disclosed by it while passing the special resolution. 3. The issuer shall not allot partly paid up eligible securities. However that in case of allotment of non-convertible debt instruments along with warrants, the allottees may pay the full consideration or part thereof payable with respect to warrants, at the time of allotment of such warrants and also that on allotment of equity shares on exercise of options attached to warrants, such equity shares shall be fully paid up. 4. The prices determined for QIP shall be subject to appropriate adjustments if the issuer – (a) Makes an issue of equity shares by way of capitalization of profits or reserves, other than by way of a dividend on shares; (b) Makes a rights issue of equity shares; (c) Consolidates its outstanding equity shares into a smaller number of shares; (d) Divides its outstanding equity shares including by way of stock split; (e) Re-classifies any of its equity shares into other securities of the issuer; (f) Is involved in such other similar events or circumstances, which in the opinion of the concerned stock exchange, requires adjustments.

Particulars	Description
	5. Meaning of Stock Exchange: Means any of the RSE in which the equity shares of the same class of the issuer are listed and in which the highest trading volume in such equity shares has been recorded during the two weeks immediately preceding the relevant date.
Restrictions on allotment [R – 86]	Allotment under the qualified institutions placement shall be made subject to the following conditions: 1. Minimum of 10% of eligible securities shall be allotted to mutual funds. However, that if the mutual funds do not subscribe to said minimum percentage or any part thereof, such minimum portion or part thereof may be allotted to other qualified institutional buyers; 2. No allotment shall be made, either directly or indirectly, to any qualified institutional buyer who is a promoter or any person related to promoters of the issuer. However, that a QIB who does not hold any shares in the issuer and who has acquired the said rights in the capacity of a lender shall not be deemed to be a person related to promoters. 3. In a QIP of non-convertible debt instrument along with warrants, an investor can subscribe to the combined offering of non-convertible debt instruments with warrants or to the individual securities, that is, either non-convertible debt instruments or warrants. 4. The applicants in QIP shall not withdraw their bids after the closure of the issue. 5. Person related to the promoters of the issuer: (a) Rights under a shareholders' agreement or voting agreement entered into with promoters or persons related to the promoters; (b) Veto rights; or (c) Right to appoint any nominee director on the board of the issuer.
Minimum number of allottees [R – 87]	1. The minimum number of allottees for each Placement of eligible securities made under QIP shall not be less than – • Where the issue size is less than or equal to Rs.250 Crores – 2 • Where the issue size is greater than Rs.250 Crores – 5 2. However, that no single allottee shall be allotted more than 50% of the issue size 3. The QIB belonging to the same group or who are under same control shall be deemed to be a single allottee. 4. "Qualified Institutional Buyers belonging to the same group" shall have the same meaning as derived from Sec. 372(11) of the Companies Act, 1956.
Validity of the special resolution [R – 88]	Allotment pursuant to the special resolution referred to in Regulation 82(a) shall be completed within a period of 12 months from the date of passing of the resolution. The issuer shall not make subsequent qualified institutions placement until expiry of six months from the date of the prior QIP made pursuant to one or more special resolutions.
Restrictions on amount raised [R – 89]	The aggregate of the proposed QIP and all previous qualified institutions placements made by the issuer in the same financial year shall not exceed 5 times the net worth of the issuer as per the audited balance sheet of the previous financial year.
Tenure [R – 90]	The tenure of the convertible or exchangeable eligible securities issued through qualified institutions placement shall not exceed 60 months from the date of allotment.
Transferability of eligible securities [R – 91]	The eligible securities allotted under QIP shall not be sold by the allottee for a period of 1 year from the date of allotment, except on a recognised stock exchange.

CHAPTER IX – BONUS ISSUE

54. Explain the guideline for "Bonus Issue of Shares"

Particulars	Description
Conditions for bonus issue [R – 92]	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 – 1. 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 association for capitalisation of reserve. 2. It has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it. 3. 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. 4. 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 if it has outstanding fully or partly

Particulars	Description
[R – 93]	convertible debt instruments at the time of making the bonus issue, unless it has made reservation of equity shares of the same class in favour of the holders of such outstanding convertible debt instruments in proportion to the convertible part thereof. 2. The equity shares reserved for the holders of fully or partly convertible debt instruments shall be issued at the time of conversion of such convertible debt instruments on the same terms or same proportion on which the bonus shares were issued.
Bonus shares only against reserves, etc. if capitalised in cash [R – 94]	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. Bonus share shall not be issued in lieu of dividend.
Completion of bonus issue [R – 95]	1. An Issuer, announcing a bonus issue after the approval of its board of directors and not requiring shareholders' approval for capitalisation of profits or reserves for making the bonus issue, shall implement the bonus issue within 15 days from the date of approval of the issue by its board of directors. 2. However, that where the issuer is required to seek shareholders' approval for capitalisation of profits or reserves for making the bonus issue, the bonus issue shall be implemented within 2 months from the date of the meeting of its board of directors wherein the decision to announce the bonus issue was taken subject to shareholders' approval. 3. Once the decision to make a bonus issue is announced, the issue cannot be withdrawn.

CHAPTER X – INDIAN DEPOSITORY RECEIPTS

55. Explain the guideline for issue of “Indian Depository Receipts”

Particulars	Description
Display of bid data [R – 102]	The stock exchanges offering online bidding system for the book building process shall display on their website, the data pertaining to book built IDR issue, in the format specified in Part B(II) of Schedule XI, from the date of opening of the bids till at least three days after closure of bids.
Disclosures in prospectus and abridged prospectus [R – 103]	1. The prospectus shall contain all material disclosures which are true, correct and adequate so as to enable the applicants to take an informed investment decision. 2. The prospectus shall contain the disclosures specified in Schedule to Companies (Issue of Indian Depository Receipts) Rules, 2004; and the disclosures in the manner as specified in Part A of Schedule XIX. 3. The abridged prospectus for issue of Indian Depository Receipts shall contain the disclosures as specified in Part B of Schedule XIX.
Post–Issue Reports [R – 104]	The Merchant Banker shall submit post-issue reports as follows – 1. Initial post–issue report on the lines of Parts A and B of Schedule XVI, within three days of closure of the issue; 2. Final post–issue report on the lines of Parts C and D of Schedule XVI, within fifteen days of the date of finalisation of basis of allotment or within fifteen days of refund of money in case of failure of issue.
Undersubscribed Issue [R – 105]	In case of undersubscribed issue of IDR, the merchant banker shall furnish information in respect of underwriters who have failed to meet their underwriting devolvement to the Board on the lines of the format specified in Schedule XVII.
Finalisation of basis of allotment [R – 106]	The executive director or managing director of the stock exchange, where the IDR are proposed to be listed, along with the post-issue lead merchant bankers and registrars to the issue shall ensure that the basis of allotment is finalised in a fair and proper manner in accordance with the allotment procedure as specified in Schedule XV.

CHAPTER XA – ISSUE OF SPECIFIED SECURITIES BY SMALL AND MEDIUM ENTERPRISES

56. Explain the guideline for issue to be made by SME (Small and Medium Enterprises)

Particulars	Description
Applicability [R – 106A]	1. An issuer whose post-issue face value capital does not exceed ten crore rupees shall issue its specified securities in accordance with provisions of this Chapter.

Particulars	Description
	- An issuer, whose post-issue face value capital is more than ten crore rupees and up to twenty five crore rupees, may also issue specified securities in accordance with provisions of this Chapter. - The provisions of these regulations, in respect of the matters not specifically dealt or excluded under this Chapter, shall mutatis mutandis apply to any issue of specified securities under this Chapter.
Meaning of SME	"SME exchange" means a trading platform of a Recognized Stock Exchange having nationwide trading terminals permitted by the Board to list the specified securities issued in accordance with this Chapter and includes a stock exchange granted recognition for this purpose but does not include the Main Board.
Exemption	Provisions of sub-regulations Regulation 6(1), 6(2), 6(3), 7, 8, 9, 10, 25, 26, 27 and 49(1) shall not apply for Small and Medium Enterprises
Filing of offer document and due diligence certificate [R – 106C]	- The issuer making a public issue or rights issue of specified securities under this Chapter shall not file the draft offer document with the Board. Provided that the issuer shall file a copy of the offer document with the Board through a merchant banker, simultaneously with the filing of the prospectus with the SME exchange and the Registrar of Companies or letter of offer with the SME Exchange. Provided further that the Board shall not issue any observation on the offer document. - The merchant banker shall submit a due-diligence certificate as per Form A of Schedule VI including additional confirmations as provided in Form H of Schedule VI along with the offer document to the Board. - The offer document shall be displayed from the date of filing on the websites of the Board, the issuer, the merchant banker and the SME exchange where the specified securities offered through the offer document are proposed to be listed.
Underwriting by merchant bankers and underwriters [R – 106D]	- The issue made under this Chapter shall be 100% underwritten. The underwriting under this regulation shall be for the entire 100% of the offer through offer document and shall not be restricted up to the minimum subscription level. - The merchant banker/s shall underwrite at least fifteen per cent of the issue size on his/their own account/s. - The issuer in consultation with merchant banker may appoint underwriters in accordance with SEBI (Underwriters) Regulations, 1993 and the merchant banker may enter into an agreement with nominated investor indicating therein the number of specified securities which they agree to subscribe at issue price in case of under-subscription. - If other underwriters fail to fulfil their underwriting obligations or other nominated investors fail to subscribe to unsubscribed portion, the merchant banker shall fulfil the underwriting obligations. - The underwriters other than the merchant banker and the nominated investors, who have entered into an agreement for subscribing to the issue in case of under-subscription, shall not subscribe to the issue made under this Chapter in any manner except for fulfilling their obligations under their respective agreements with the merchant banker in this regard. - All the underwriting and subscription arrangements made by the merchant banker shall be disclosed in the offer document. - The merchant banker shall file an undertaking to the Board that the issue has been hundred per cent underwritten along with the list of underwriters and nominated investors indicating the extent of underwriting or subscriptions commitment made by them, one day before the opening of issue.
Minimum Application Value [R –106E]	The issuer shall stipulate in the offer document, the minimum application size in terms of number of specified securities which shall not be less than one lakh rupees per application.
Minimum Number of Allottees [R – 106F]	No allotment shall be made pursuant to any initial public offer made under this Chapter, if the number of prospective allottees is less than 50
Listing of specified securities [R – 106G]	- Specified securities issued in accordance with this Chapter shall be listed on SME exchange. - Where any listed issuer issues specified securities in accordance with provisions of this Chapter it shall migrate the specified securities already listed on any recognized stock exchange/s to the SME exchange.
Migration to SME exchange [R – 106H]	A listed issuer whose post-issue face value capital is less than twenty five crore rupees may migrate its specified securities to SME exchange if its shareholders approve such migration by passing a special resolution through postal ballot to this effect and if such issuer fulfils the eligibility criteria for listing laid down by the SME exchange.

Particulars	Description
	2. Provided that the special resolution shall be acted upon if and only if the votes cast by shareholders other than promoters in favour of the proposal amount to at least two times the number of votes cast by shareholders other than promoter shareholders against the proposal.
Migration to Main Board [R – 106-I]	1. An issuer, whose specified securities are listed on a SME Exchange and whose post issue face value capital is more than ten crore rupees and up to twenty five crore rupees, may migrate its specified securities to Main Board if its shareholders approve such migration by passing a special resolution through postal ballot to this effect and if such issuer fulfils the eligibility criteria for listing laid down by the Main Board. Provided that the special resolution shall be acted upon if and only if the votes cast by shareholder other than promoters in favour of the proposal amount to at least two times the number of votes cast by shareholders other than promoter shareholders against the proposal. 2. Where the post issue face value capital of an issuer listed on SME exchange is likely to increase beyond twenty five crore rupees by virtue of any further issue of capital by the issuer by way of rights issue, preferential issue, bonus issue, etc. the issuer shall migrate its specified securities listed on SME exchange to Main Board and seek listing of specified securities proposed to be issued on the Main Board subject to the fulfilment of the eligibility criteria for listing of specified securities laid down by the Main Board. Provided that no further issue of capital by the issuer shall be made unless— 3. The shareholders of the issuer have approved the migration by passing a special resolution through postal ballot wherein the votes cast by shareholders other than promoters in favour of the proposal amount to at least two times the number of votes cast by shareholders other than promoter shareholders against the proposal; 4. The issuer has obtained in-principle approval from the Main Board for listing of its entire specified securities on it.
Market Making [R – 106J]	1. The merchant banker shall ensure compulsory market making through the stock brokers of SME exchange in the manner specified by the Board for a minimum period of three years from the date of listing of specified securities issued under this Chapter on SME exchange or from the date of migration from Main Board in terms of regulation 106H, as the case may be. 2. The merchant banker may enter into agreement with nominated investors for receiving or delivering the specified securities in the market making subject to the prior approval by the SME exchange where the specified securities are proposed to be listed. 3. The issuer shall disclose the details of arrangement of market making in the offer document. 4. The specified securities being bought or sold in the process of market making may be transferred to or from the nominated investor with whom the merchant banker has entered into an agreement for the market making. Provided that the inventory of the market maker, as on the date of allotment of the specified securities, shall be at least five per cent of the specified securities proposed to be listed on SME exchange. 5. The market maker shall buy the entire shareholding of a shareholder of the issuer in one lot, where value of such shareholding is less than the minimum contract size allowed for trading on the SME exchange. Provided that market maker shall not sell in lots less than the minimum contract size allowed for trading on the SME exchange. 6. Market maker shall not buy the shares from the promoters or persons belonging to promoter group of the issuer or any person who has acquired shares from such promoter or person belonging to promoter group, during the compulsory market making period. 7. The promoters' holding shall not be eligible for offering to the market maker. Provided that the promoters' holding which is not locked-in as per these regulations can be traded with prior permission of the SME exchange, in the manner specified by the Board. 8. Subject to the agreement between the issuer and the merchant banker/s, the merchant banker/s who have the responsibility of market making may be represented on the board of the issuer.

Note:

Note 1: "Main Board" means a recognized stock exchange having nationwide trading terminals, other than SME exchange.

Note 2: "Nominated Investor" means a qualified institutional buyer or private equity fund, who enters into an agreement with the merchant banker to subscribe to the issue in case of under-subscription or to receive or deliver the specified securities in the market-making process.

Note 3: "Private Equity Fund" means a fund registered with any regulatory authority or a fund established by any person registered with any regulatory authority.

CHAPTER XI – MISCELLANEOUS ISSUES

57. Explain the guideline for Miscellaneous Issues.

Particulars	Description
Directions by the Board [R – 107]	Without prejudice to the power under sections 11, 11A, 11B, 11D, sub-section (3) of section 12, Chapter VIA and section 24 of the Act or section 621 of the Companies Act, 1956, the Board may either suo motu or on receipt of information or on completion or pendency of any inspection, inquiry or investigation, in the interests of investors or the securities market, issue such directions or orders as it deems fit including any or all of the following – • Directing the persons concerned not to access the securities market for a specified period; • Directing the person concerned to sell or divest the securities; • Any other direction which Board may deem fit and proper in the circumstances of the case. Provided that the Board shall, either before or after issuing such direction or order, give a reasonable opportunity of being heard to the person concerned. Provided further that if any interim direction or order is required to be issued, the Board may give post-decisional hearing to the person concerned.
Power to remove difficulty [R – 108]	In order to remove any difficulties in the application or interpretation of these regulations, the Board may issue clarifications through guidance notes or circulars after recording reasons in writing.
Power to relax strict enforcement of the regulations [R – 109]	The Board may, in the interest of investors or for the development of the securities market, relax the strict enforcement of any requirement of these regulations, if the Board is satisfied that – • The requirement is procedural in nature; or • Any disclosure requirement is not relevant for a particular class of industry or issuer; or • The non-compliance was caused due to factors beyond the control of the issuer.
Amendments to other regulations [R – 110]	On and from the commencement of these regulations, the regulations mentioned in Schedule XX shall stand amended to the extent specified therein.
Repeal and Savings [R – 111]	On and from the commencement of these regulations, the Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000 shall stand rescinded. Notwithstanding such rescission – • anything done or any action taken or purported to have been done or taken including observation made in respect of any draft offer document, any enquiry or investigation commenced or show cause notice issued in respect of the said Guidelines shall be deemed to have been done or taken under the corresponding provisions of these regulations; • any offer document, whether draft or otherwise, filed or application made to the Board under the said Guidelines and pending before it shall be deemed to have been filed or made under the corresponding provisions of these regulations.

PART II

FOREIGN EXCHANGE MANAGEMENT ACT, 1999

[AMENDMENTS MADE UPTO APRIL 2010 – APPLICABLE FOR MAY 2011 EXAMINATIONS]

The following Amendments are required to be made in **“Padhuka’s Corporate and Allied Laws Material” For CA Final –**

S. No.	Pg. No.	Amendments to be made in the Book
1	Q. No. 21, Pg. No. 10.11, Point. 8	Transactions requiring Central Government Approval – 8 th Point (Remittance under technical collaboration agreement) is Deleted from (16-12-2009). Hence the transaction is permitted without any restriction.
2	Q. No. 21, Point. No.6. Pg. No. 10.12	Transaction requiring RBI Approval – Remittance for maintenance of close relative abroad – Point 6. Insert the following explanation below Point 6: <i>“a person resident in India on account of his employment or deputation of a specified duration (irrespective of length thereof) or for a specific job or assignment, the duration of which does not exceed three years, is a resident but not permanently resident.”</i>
3	Q. No. 21, Pg. No. 10.12, Point 12	Transaction requiring RBI Approval – Delete Point 12 – Remittance towards purchase of Trademark / Franchise. Hence the transaction is permitted without any prior approval of RBI.
4	Q. No. 21, Pg. No.10.12, Para. 13	Substitute Point 13 by the following: Remittances exceeding 5% of the investment brought into India or US\$ 1,00,000 whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses.
6	Q. No. 34, point 1 (a) & (c). Pg. No.10.23.	Change Rs.5,000 appearing in point (a) and (c) to Rs.7,500/–
7	Q. No. 35, Para (2) & (3). Pg. No. 10.24	The Credit Period for Foreign Export appearing in point 2 change to 12 months (from the present 6 months) (in all place appearing in Point 2) No change in additional relaxation for Export to a Warehouse and Status Holder Export.
8	Q. No. 43, Para. 2. (a). Pg. No. 10.32	Regulations in Borrowing / Lending in Foreign Exchange – Permitted Borrowing in Foreign Exchange. Head Office or Branch or correspondent outside India. Upto 50% of unimpaired Tier I Capital or USD 10 million, whichever is higher, subject to RBI guidelines. (Changed from present 25% of unimpaired Tier I Capital)

PART III

FOREIGN DIRECT INVESTMENTS

[AS ISSUED BY ICAI IN THEIR SUPPLEMENTARY STUDY MATERIAL FOR CA FINAL CORPORATE AND ALLIED LAWS]

ORIGIN TYPE, ELIGIBILITY, CONDITIONS AND ISSUE/TRANSFER OF INVESTMENT

1. ORIGIN OF INVESTMENT IN INDIA

1. A non-resident entity (other than a citizen of Pakistan or an entity incorporated in Pakistan) can invest in India, subject to the FDI Policy. A citizen of Bangladesh or an entity incorporated in Bangladesh can invest in India under the FDI Policy, only under the Government route.
2. NRIs resident in Nepal and Bhutan as well as citizens of Nepal and Bhutan are permitted to invest in the capital of Indian companies on repatriation basis, subject to the condition that the amount of consideration for such investment shall be paid only by way of inward remittance in free foreign exchange through normal banking channels.
3. OCBs have been derecognized as a class of Investors in India with effect from September 16, 2003. Erstwhile OCBs which are incorporated outside India and are not under the adverse notice of RBI can make fresh investments under FDI Policy as incorporated non-resident entities, with the prior approval of Government of India if the investment is through Government route; and with the prior approval of RBI if the investment is through Automatic route.
4. (i) An FII may invest in the capital of an Indian company either under the FDI Scheme/Policy or the Portfolio Investment Scheme. 10% individual limit and 24% aggregate limit for FII investment would still be applicable even when FIIs invest under the FDI scheme/policy.
(ii) The Indian company which has issued shares to FIIs under the FDI Policy for which the payment has been received directly into company's account should report these figures separately under item no. 5 of Form FC-GPR (Post-issue pattern of shareholding) so that the details could be suitably reconciled for statistical/monitoring purposes.
(iii) A daily statement in respect of all transactions (except derivative trade) have to be submitted by the custodian bank in floppy / soft copy in the prescribed format directly to RBI to monitor the overall ceiling/sectoral cap/statutory ceiling.
5. No person other than registered FII/NRI as per Schedules II and III of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations of FEMA 1999, can invest/trade in capital of Indian Companies in the Indian Stock Exchanges directly i.e. through brokers like a Person Resident in India.
6. A Foreign Venture Capital Investor (FVCI) may contribute upto 100% of the capital of a Venture Capital Fund/Indian Venture Capital Undertaking and may also set up a domestic asset management company to manage the fund. All such investments are allowed under the automatic route subject to SEBI & RBI regulations and FDI Policy. However FVCIs are also allowed to invest as non-resident entities in other companies subject to FDI Policy.

2. TYPES OF INSTRUMENTS.

1. Indian companies can issue equity shares, fully, compulsorily and mandatorily convertible debentures and fully, compulsorily and mandatorily convertible preference shares subject to pricing guidelines/valuation norms prescribed under FEMA Regulations. The pricing of the capital instruments should be decided/determined upfront at the time of issue of the instruments.
 2. Other types of Preference shares/Debentures i.e. non-convertible, optionally convertible or partially convertible for issue of which funds have been received on or after May 1, 2007 are considered as debt. Accordingly all norms applicable for ECBs relating to eligible borrowers, recognized lenders, amount and maturity, end-use stipulations, etc. shall apply. Since these instruments would be denominated in rupees, the rupee interest rate will be based on the swap equivalent of London Interbank Offered Rate (LIBOR) plus the spread as permissible for ECBs of corresponding maturity
 3. The inward remittance received by the Indian company vide issuance of DRs and FCCBs are treated as FDI and counted towards FDI.
- ##### 4. Issue of shares by Indian Companies under FCCB/ADR/GDR
- (i) Indian companies can raise foreign currency resources abroad through the issue of FCCB/DR(ADRs/GDRs), in accordance with the Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and guidelines issued by the Government of India there under from time to time.
 - (ii) A company can issue ADRs / GDRs if it is eligible to issue shares to persons resident outside India under the FDI Policy. However, an Indian listed company, which is not eligible to raise funds from the Indian Capital Market

including a company which has been restrained from accessing the securities market by the Securities and Exchange Board of India (SEBI) will not be eligible to issue ADRs/GDRs.

- (iii) Unlisted companies, which have not yet accessed the ADR/GDR route for raising capital in the international market, would require prior or simultaneous listing in the domestic market, while seeking to issue such overseas instruments. Unlisted companies, which have already issued ADRs/GDRs in the international market, have to list in the domestic market on making profit or within three years of such issue of ADRs/GDRs, whichever is earlier. ADRs/ GDRs are issued on the basis of the ratio worked out by the Indian company in consultation with the Lead Manager to the issue. The proceeds so raised have to be kept abroad till actually required in India. Pending repatriation or utilization of the proceeds, the Indian company can invest the funds in:-
 - (a) Deposits, Certificate of Deposits or other instruments offered by banks rated by Standard and Poor, Fitch, IBCA, Moody's, etc. with rating not below the rating stipulated by Reserve Bank from time to time for the purpose;
 - (b) Deposits with branch/es of Indian Authorized Dealers outside India; and
 - (c) Treasury bills and other monetary instruments with a maturity or unexpired maturity of one year or less.
- (iv) There are no end-use restrictions except for a ban on deployment / investment of such funds in real estate or the stock market. There is no monetary limit up to which an Indian company can raise ADRs / GDRs.
- (v) The ADR / GDR proceeds can be utilized for first stage acquisition of shares in the disinvestment process of Public Sector Undertakings / Enterprises and also in the mandatory second stage offer to the public in view of their strategic importance.
- (vi) Voting rights on shares issued under the Scheme shall be as per the provisions of Companies Act, 1956 and in a manner in which restrictions on voting rights imposed on ADR/GDR issues shall be consistent with the Company Law provisions. Voting rights in the case of banking companies will continue to be in terms of the provisions of the Banking Regulation Act, 1949 and the instructions issued by the Reserve Bank from time to time, as applicable to all shareholders exercising voting rights.
- (vii) Erstwhile OCBs who are not eligible to invest in India and entities prohibited from buying, selling or dealing in securities by SEBI will not be eligible to subscribe to ADRs / GDRs issued by Indian companies.
- (viii) The pricing of ADR / GDR issues should be made at a price determined under the provisions of the Scheme of issue of Foreign Currency Convertible Bonds and Ordinary Shares (through Depository Receipt Mechanism) Scheme, 1993 and guidelines issued by the Government of India and directions issued by the Reserve Bank, from time to time.
- (ix) The pricing of sponsored ADRs/GDRs would be determined under the provisions of the Scheme of issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and guidelines issued by the Government of India and directions issued by the Reserve Bank, from time to time.

5. (i) Two-way Fungibility Scheme: A limited two-way Fungibility scheme has been put in place by the Government of India for ADRs / GDRs. Under this Scheme, a stock broker in India, registered with SEBI, can purchase shares of an Indian company from the market for conversion into ADRs/GDRs based on instructions received from overseas investors. Reissuance of ADRs / GDRs would be permitted to the extent of ADRs / GDRs which have been redeemed into underlying shares and sold in the Indian market.

(ii) Sponsored ADR/GDR issue: An Indian company can also sponsor an issue of ADR / GDR. Under this mechanism, the company offers its resident shareholders a choice to submit their shares back to the company so that on the basis of such shares, ADRs / GDRs can be issued abroad. The proceeds of the ADR / GDR issue are remitted back to India and distributed among the resident investors who had offered their Rupee denominated shares for conversion. These proceeds can be kept in Resident Foreign Currency (Domestic) accounts in India by the resident shareholders who have tendered such shares for conversion into ADRs / GDRs.

ELIGIBILITY OF FDI IN RESIDENT ENTITIES

1. FDI in an Indian Company: Indian companies including those which are micro and small enterprises can issue capital against FDI.

2. FDI in Partnership Firm / Proprietary Concern:

- (i) A Non-Resident Indian (NRI) or a Person of Indian Origin (PIO) resident outside India can invest by way of contribution to the capital of a firm or a proprietary concern in India on non-repatriation basis provided;
 - (a) Amount is invested by inward remittance or out of NRE/FCNR(B)/NRO account maintained with Authorized Dealers / Authorized banks.
 - (b) The firm or proprietary concern is not engaged in any agricultural/plantation or real estate business or print media sector.
 - (c) Amount invested shall not be eligible for repatriation outside India.
- (ii) Investments with repatriation benefits: NRIs/PIO may seek prior permission of Reserve Bank for investment in sole proprietorship concerns/partnership firms with repatriation benefits. The application will be decided in consultation with the Government of India.

- (iii) Investment by non-residents other than NRIs/PIO: A person resident outside India other than NRIs/PIO may make an application and seek prior approval of Reserve Bank for making investment by way of contribution to the capital of a firm or a proprietorship concern or any association of persons in India. The application will be decided in consultation with the Government of India.
- (iv) Restrictions: An NRI or PIO is not allowed to invest in a firm or proprietorship concern engaged in any agricultural/plantation activity or real estate business (i.e. dealing in land and immovable property with a view to earning profit or earning income there from) or engaged in Print Media.

3. FDI in Trusts: FDI in Trusts other than VCF is not permitted.

4. FDI in other Entities: FDI in resident entities other than those mentioned above is not permitted.

CONDITIONS ON ISSUE/TRANSFER OF SHARES

1. The capital instruments should be issued within 180 days from the date of receipt of the inward remittance or by debit to the NRE/FCNR (B) account of the non-resident investor. In case, the capital instruments are not issued within 180 days from the date of receipt of the inward remittance or date of debit to the NRE/FCNR (B) account, the amount of consideration so received should be refunded immediately to the non-resident investor by outward remittance through normal banking channels or by credit to the NRE/FCNR (B) account, as the case may be. Non-compliance with the above provision would be reckoned as a contravention under FEMA and would attract penal provisions. In exceptional cases, refund of the amount of consideration outstanding beyond a period of 180 days from the date of receipt may be considered by the RBI, on the merits of the case.
2. **Issue price of shares** – Issue price of shares to persons resident outside India under the FDI Policy, shall be on the basis of SEBI guidelines in case of listed companies. In case of unlisted companies, valuation of shares has to be done by a Chartered Accountant in accordance with the guidelines issued by the erstwhile Controller of Capital Issues (CCI).
3. **Foreign Currency Account** – Indian companies which are eligible to issue shares to persons resident outside India under the FDI Policy may be allowed to retain the share subscription amount in a Foreign Currency Account, with the prior approval of RBI.
4. **Transfer of shares and convertible debentures** –
 - (i) Subject to FDI sectoral policy, foreign investors can also invest in Indian companies by purchasing/acquiring existing shares from Indian shareholders or from other nonresident shareholders. General permission has been granted to non-residents/NRIs for acquisition of shares by way of transfer subject to the following:
 - (a) A person resident outside India (other than NRI and erstwhile OCB) may transfer by way of sale or gift, the shares or convertible debentures to any person resident outside India (including NRIs).
 - (b) NRIs may transfer by way of sale or gift the shares or convertible debentures held by them to another NRI. In both the above cases, the 'Existing Venture/tie-up condition' as defined in para 4.2.2 would apply.
 - (c) A person resident outside India can transfer any security to a person resident in India by way of gift.
 - (d) A person resident outside India can sell the shares and convertible debentures of an Indian company on a recognized Stock Exchange in India through a stock broker registered with stock exchange or a merchant banker registered with SEBI.
 - (e) A person resident in India can transfer by way of sale, shares/convertible debentures (including transfer of subscriber's shares), of an Indian company in sectors other than financial services sectors (i.e. Banks, NBFC, Insurance, ARCs, CICs, infrastructure companies in the securities market viz. Stock Exchanges, Clearing Corporations, and Depositories, Commodity Exchanges, etc.) under private arrangement to a person resident outside India, subject to the guidelines given in.
 - (f) General permission is also available for transfer of shares/convertible debentures, by way of sale under private arrangement by a person resident outside India to a person resident in India, subject to the guidelines given in.
 - (g) The above General Permission also covers transfer by a resident to a non-resident of shares/convertible debentures of an Indian company, engaged in an activity earlier covered under the Government Route but now falling under Automatic Route, as well as transfer of shares by a non-resident to an Indian company under buyback and/or capital reduction scheme of the company. However, this General Permission is not available in case of transfer of shares / debentures, from a Resident to a Non- Resident/Non-Resident Indian, of an entity engaged in any activity in the financial services sector (i.e. Banks, NBFCs, ARCs, CICs, Insurance, infrastructure companies in the securities market such as Stock Exchanges, Clearing Corporations, and Depositories, Commodity Exchanges, etc.).
 - (h) The Form FC-TRS should be submitted to the AD Category-I Bank, within 60 days from the date of receipt of the amount of consideration. The onus of submission of the Form FC-TRS within the given timeframe would be on the transferor/transferee, resident in India.

- (ii) The sale consideration in respect of equity instruments purchased by a person resident outside India, remitted into India through normal banking channels, shall be subjected to a Know Your Customer (KYC) check by the remittance receiving AD Category – I bank at the time of receipt of funds. In case, the remittance receiving AD Category – I bank is different from the AD Category – I bank handling the transfer transaction, the KYC check should be carried out by the remittance receiving bank and the KYC report be submitted by the customer to the AD Category – I bank carrying out the transaction along with the Form FC- TRS.
- (iii) Escrow: AD Category – I banks have been given general permission to open Escrow account and Special account of non-resident corporate for open offers / exit offers and delisting of shares. The relevant SEBI (SAST) Regulations or any other applicable SEBI Regulations/ provisions of the Companies Act, 1956 will be applicable.

5. Prior permission of RBI in certain cases for transfer of capital instruments –

- (i) The following instances of transfer of capital instruments from resident to non-residents by way of sale require prior approval of RBI:
 - (a) Transfer of capital instruments of an Indian company engaged in financial services sector i.e. Banks, NBFCs, Asset Reconstruction Companies, CICs, Insurance companies, infrastructure companies in the securities market such as Stock Exchanges, Clearing Corporations, and Depositories, Commodity Exchanges, etc.).
 - (b) Transactions which attract the provisions of SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 1997.
 - (c) The activity of the Indian company whose capital instruments are being transferred falls outside the automatic route and the approval of the FIPB has been obtained for the said transfer.
 - (d) The transfer is to take place at a price which falls outside the pricing guidelines specified by the Reserve Bank from time to time.
 - (e) Transfer of capital instruments where the non-resident acquirer proposes deferment of payment of the amount of consideration, prior approval of the Reserve Bank would be required, as hitherto. Further, in case approval is granted for a transaction, the same should be reported in Form FC-TRS, to an AD Category – I bank for necessary due diligence , within 60 days from the date of receipt of the full and final amount of consideration. The link office of the AD Category-I Bank will consolidate such Form FC-TRS details and report the same to the Central Office of RBI.
- (ii) The transfer of capital instruments of companies engaged in sectors falling under the Government Route from residents to non-residents by way of sale or otherwise requires Government approval followed by permission from RBI.
- (iii) A person resident in India, who intends to transfer any capital instrument, by way of gift to a person resident outside India, has to obtain prior approval from Reserve Bank. While forwarding applications to Reserve Bank for approval for transfer of capital instruments by way of gift, the prescribed documents should be enclosed. Reserve Bank considers the following factors while processing such applications:
 - (a) The proposed transferee (donee) is eligible to hold such capital instruments under Schedules 1, 4 and 5 of Notification No. FEMA 20/2000-RB dated May 3, 2000, as amended from time to time.
 - (b) The gift does not exceed 5 per cent of the paid-up capital of the Indian company/each series of debentures/each mutual fund scheme.
 - (c) The applicable sectoral cap limit in the Indian company is not breached.
 - (d) The transferor (donor) and the proposed transferee (donee) are close relatives as defined in Section 6 of the Companies Act, 1956, as amended from time to time
 - (e) The value of capital instruments to be transferred together with any capital instruments already transferred by the transferor, as gift, to any person residing outside India does not exceed the rupee equivalent of USD 25,000 during the calendar year.
 - (f) Such other conditions as stipulated by Reserve Bank in public interest from time to time.

6. Conversion of ECB/Lumpsum Fee/Royalty into Equity.

- (i) Indian companies have been granted general permission for conversion of External Commercial Borrowings (ECB) (excluding those deemed as ECB) in convertible foreign currency into shares/preference shares, subject to the following conditions and reporting requirements.
 - (a) The activity of the company is covered under the Automatic Route for FDI or the company has obtained Government approval for foreign equity in the company;
 - (b) The foreign equity after conversion of ECB into equity is within the sectoral cap, if any;
 - (c) Pricing of shares is as per SEBI regulations or erstwhile CCI guidelines in the case of listed or unlisted companies respectively;
 - (d) Compliance with the requirements prescribed under any other statute and regulation in force; and
 - (e) The conversion facility is available for ECBs availed under the Automatic or Government Route and is applicable to ECBs, due for payment or not, as well as secured/unsecured loans availed from non-resident collaborators.
- (ii) General permission is also available for issue of shares/preference shares against lump sum technical know-how fee, royalty, under automatic route or SIA/FIPB route, subject to pricing guidelines of SEBI/CCI and compliance with applicable tax laws.

ISSUE OF INSTRUMENTS.

1. **Issue of Rights/Bonus Shares** – FEMA provisions allow Indian companies to freely issue Rights/Bonus shares to existing non-resident shareholders, subject to adherence to sectoral cap, if any. However, such issue of bonus / rights shares has to be in accordance with other laws/statutes like the Companies Act, 1956, SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (in case of listed companies), etc. The price of shares offered on rights basis by the Indian company to non-resident shareholders shall not be lower than the price at which such shares are offered to resident shareholders.
2. **Prior permission of RBI for Rights issue to erstwhile OCBs**- OCBs have been de- recognised as a class of investors from September 16, 2003. Therefore companies desiring to issue rights share to such erstwhile OCBs will have to take specific prior permission from RBI. As such, entitlement of rights share is not automatically available to erstwhile OCBs. However bonus shares can be issued to erstwhile OCBs without the approval of RBI.
3. **Additional allocation of rights share by residents to non-residents** – Existing non- resident shareholders are allowed to apply for issue of additional shares/ fully, compulsorily and mandatorily convertible debentures/ fully, compulsorily and
4. mandatorily convertible preference shares over and above their rights share entitlements. The investee company can allot the additional rights share out of unsubscribed portion, subject to the condition that the overall issue of shares to non-residents in the total paid-up capital of the company does not exceed the sectoral cap.
5. **Acquisition of shares under Scheme of Merger/Demerger/Amalgamation**– Mergers/demergers/ amalgamations of companies in India are usually governed by an order issued by a competent Court on the basis of the Scheme submitted by the companies undergoing merger/demerger/amalgamation. Once the scheme of merger or demerger or amalgamation of two or more Indian companies has been approved by a Court in India, the transferee company or new company is allowed to issue shares to the shareholders of the transferor company resident outside India, subject to the conditions that:
 - (i) the percentage of shareholding of persons resident outside India in the transferee or new company does not exceed the sectoral cap, and
 - (ii) the transferor company or the transferee or the new company is not engaged in activities which are prohibited under the FDI policy.
7. **Issue of shares under Employees Stock Option Scheme (ESOPs)** –
 - (i) Listed Indian companies are allowed to issue shares under the Employees Stock Option Scheme (ESOPs), to its employees or employees of its joint venture or wholly owned subsidiary abroad who are resident outside India, other than to the citizens of Pakistan. ESOPs can be issued to citizens of Bangladesh with the prior approval of FIPB. Shares under ESOPs can be issued directly or through a Trust subject to the condition that:
 - (a) The scheme has been drawn in terms of relevant regulations issued by the SEBI, and
 - (b) The face value of the shares to be allotted under the scheme to the nonresident employees does not exceed 5 per cent of the paid-up capital of the issuing company.
 - (ii) Unlisted companies have to follow the provisions of the Companies Act, 1956. The Indian company can issue ESOPs to employees who are resident outside India, other than to the citizens of Pakistan. ESOPs can be issued to the citizens of Bangladesh with the prior approval of the FIPB.
 - (iii) The issuing company is required to report the details of such issues to the Regional Office concerned of the Reserve Bank, within 30 days from the date of issue of shares.

CALCULATION, ENTRY ROUTE, CAPS, ENTRY CONDITIONS, ETC. OF INVESTMENT

1. Investment in Indian companies can be made both by non-resident as well as resident Indian entities. Any non-resident investment in an Indian company is direct foreign investment. Investment by resident Indian entities could again comprise of both resident and non-resident investment. Thus, such an Indian company would have indirect foreign investment if the Indian investing company has foreign investment in it. The indirect investment can also be a cascading investment i.e. through multi-layered structure.
2. For the purpose of computation of indirect Foreign investment, Foreign Investment in Indian company shall include all types of foreign investments i.e. FDI; investment by FIIs(holding as on March 31); NRIs; ADRs; GDRs; Foreign Currency Convertible Bonds (FCCB); fully, compulsorily and mandatorily convertible preference shares and fully, compulsorily and mandatorily convertible Debentures regardless of whether the said investments have been made under Schedule 1, 2, 3 and 6 of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations.
3. **Guidelines for calculation of total foreign investment i.e. direct and indirect foreign investment in an Indian company.**
 - (i) **Counting the Direct Foreign Investment:** All investment directly by a non-resident entity into the Indian company would be counted towards foreign investment.
 - (ii) **Counting of indirect foreign Investment:**