

TECHNICAL GUIDE ON DISCLOSURE AND REPORTING OF KEY PERFORMANCE INDICATORS (KPIs) IN OFFER DOCUMENTS (Appendices)



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Prologue

Securities and Exchange Board of India has inserted the following amendment in its ICDR Regulation by issue of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Fourth Amendment) Regulations, 2022, w-e-f 21.11.2022, that shall be applicable for all issues where Red Herring Prospectus is filed with the Registrars of Companies on or after the 21.11.2022.

“KPIs disclosed in the offer document shall be certified by the statutory auditor(s) or Chartered Accountants or firm of Chartered Accountants, holding a valid certificate issued by the Peer Review Board of the Institute of Chartered Accountants of India or by Cost Accountants, holding a valid certificate issued by the Peer Review Board of the Institute of Cost Accountants of India.”

As per this amendment, SEBI has recognized the scope of services that may be rendered by the Cost Accountants in practice who holds a valid peer review certificate issued by the Peer Review Board of the Institute of Cost Accountants of India (ICAI) for verification & certification of Key Performance Indicators (KPIs) disclosed by the Issuer Company in its Offer Document. Hence, the Institute felt necessary to issue a Technical Guide for the benefit of its Members in practice who may get engaged in rendering the abovementioned services to the issuer companies. Technical Guide is available on the Institute’s website <https://icmai.in>

Before accepting and executing any assignment relating to the verification and certification of KPIs disclosed by the issuer company in its offer document, Members are advised to study and fully familiarize with the applicable provisions of the Securities and Exchange Board of India (Issue of Capital and

Disclosure Requirements) Regulations, 2018, and the Companies Act, 2013, as amended to date. Members should also update themselves with any further amendments issued in these and other related legislative documents, after the date of publication of the Institute's Technical Guide on the subject. In addition, they should become fully conversant with the notified Generally Accepted Accounting Principles (GAAP), Indian Accounting Standards (Ind AS), and Accounting Standards (AS). However, for quick reference, following extracts are given in this document:

- Brief extracts of the relevant provisions of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 are given in Appendix-I.
- Relevant provisions of the Companies Act, 2013 as applicable to the issue/sale of shares & securities have been given in Appendix-II.
- Brief notes on the Generally Accepted Accounting Principles (GAAP), Indian Accounting Standards (Ind AS), and Accounting Standards (AS) are given in Appendix-III.

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Appendix-I

RELEVANT EXTRACTS OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2018

The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 were notified on 11th September, 2018. Since then, these were amended from time-to-time, the last being vide SEBI (ICDR) (Fourth Amendment) Regulations, 2022 w-e-f 21.11.2022.

Applicability

These regulations apply to the following:

- (a) an initial public offer by an unlisted issuer;
- (b) a rights issue by a listed issuer; where the aggregate value of the issue is fifty crore rupees or more;
- (c) a further public offer by a listed issuer;
- (d) a preferential issue by a listed issuer;
- (e) a qualified institutions placement by a listed issuer;
- (f) an initial public offer of Indian depository receipts;
- (g) a rights issue of Indian depository receipts;
- (h) an initial public offer by a small and medium enterprise;
- (i) a listing on the innovator's growth platform through an issue or without an issue; and
- (j) a bonus issue by a listed issuer.

In case of rights issue of size less than fifty crore rupees, the issuer shall prepare the letter of offer in accordance with

requirements as specified in ICDR Regulations and file the same with the Board for information and dissemination on the Board's website.

Further, ICDR Regulations shall not apply to issue of securities under clause (b), (d) and (e) of sub-regulation (1) of regulation 9 of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

Chapter Plan

ICDR Regulations 2018 has been divided into following Chapters and Schedules:

CHAPTERS

Chapter No.	Details	Regulation Nos.
Chapter I	Preliminary	1 - 3
Chapter II	Initial Public Offer on Main Board	4 - 59
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Chapter V	Preferential Issue	158 - 170
Chapter VI	Qualified Institutions Placement	171 - 180
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Chapter IX	Initial Public Offer by Small and Medium Enterprises	227 - 281
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Chapter X-A	Social Stock Exchange	292A - 292P
Chapter XI	Bonus Issue	293 – 295
Chapter XI-A	Power to Relax Strict Enforcement of the Regulations	295A
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SCHEDULES

Schedule No.	Details	Reference Regulation Nos.
Schedule I	Lead Managers' Inter-Se Allocation of Responsibilities	23(2), 69(2), 121(2), 184(2) and 245(2)
Schedule II	Contents of Agreement between Lead Manager(s) and Issuer	23(5), 69(5), 71(2), 121(5), 184 (1) and 245(5)
Schedule III	Fees to be Paid along with Draft Offer Document/ Draft Letter of Offer or Offer Document	s 25(1), 25(6) 59C (1), 59E (2), 59E (3), 71(1), 71(6), 100(1), 123(1), 123(6), 156(1), 186(5), 220(1), 287(1) and 288(1)
Schedule IV	Filing of Offer Documents with the Board	25(1) 59C (1), 71(1), 123(1), 186(1)
Schedule V	Formats of Due Diligence Certificates	Different regulation reference for each Form
Schedule VI	Disclosures in the Offer Document, Abridged Prospectus and Abridged Letter of Offer	17, 24(2)(b), 34(1), 57(1)(f), 70(2), 71(2)(d), 75, 122(2)(ii), 123(2)(d), 131(1), 153(1)(f), 186(3)(d), 218(2), 220(1)], 239, 246(2)(b), 282(1)(f), 287(2), 291
Schedule VII	Disclosures in a Placement	175(2)

Schedule No.	Details	Reference Regulation Nos.
	Document	
Schedule VIII	Disclosures in Offer Document and Abridged Prospectus and Letter of Offer for Issue of Indian Depository Receipts	185(2)(b), 193(1), 200(1), 218(2) and 222(1)
Schedule IX	Public Communications and Publicity Materials	42, 59C(8), 59C(9), 59C(13), 83, 138, 199 and 264
Schedule X	Formats of Advertisements for a Public Issue	43(2), 29(4), 127(4), 139(2), 189(4), 264(2) and 250(3)
Schedule XI	Format of Report to be Submitted by the Monitoring Agency	82(2) and 82(3)
Schedule XII	Mandatory Collection Centres	23(6), 69(6), 121(6), 184(6) and 244(6)
Schedule XIII	Book Building Process	28(2), 30(1)(c), 32(2), 126(2), 128(1)(d), 129(3), 188(2), 190(1)(b), 250(2), 252(1)(c) and 291(4)
Schedule XIV	Illustration Explaining the Procedure of Allotment	47(3), 49(5), 145(5), 192(1)(a), 204(4), 267(3), 143(3) and 268(5)
Schedule XV	Format of Report for Green Shoe Option	57(10), 153(10) and 279(10)
Schedule XVI	Nature of Changes in the Offer Document requiring filing of Updated Offer Document	25(6) 59E (3), 71(6), 123(6) and 186(5)
Schedule XVII	Formats of Post-Issue Reports	55, 151, 210 and 273
Schedule	Format of Underwriting	52(7), 93(7), 148(7), 202(4),

Schedule No.	Details	Reference Regulation Nos.
XVIII	Devolvement Statement	207(7) and 271(7)
Schedule XIX	Listing of Securities on Stock Exchanges	7(1)(a), 62(1)(a), 104(1)(a) and 183(3)(a)
Schedule XX	Conditions/ Manner of Providing Exit Opportunity to Dissenting Shareholders	59 and 157

Important Definitions

In these regulations, unless the context otherwise requires:

- 1) “Act” means the Securities and Exchange Board of India Act, 1992;
- 2) “anchor investor” means a qualified institutional buyer who makes an application for a value of at least ten crore rupees in a public issue on the main board made through the book building process in accordance with these regulations or makes an application for a value of at least two crore rupees for an issue made in accordance with Chapter IX of these regulations;
- 3) “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;
- 4) “associate” means a person which is an associate of the issuer and as defined under the Companies Act, 2013;
- 5) “Board” means the Securities and Exchange Board of India established under the Act;

- 6) “book building” means a process undertaken to elicit demand and to assess the price for determination of the quantum or value or coupon of specified securities or Indian Depository Receipts, as the case may be, in accordance with these regulations;
- 7) “composite issue” means an issue of specified securities by a listed issuer on public-cum-rights basis, wherein the allotment in both public issue and rights issue is proposed to be made simultaneously;
- 8) “control” shall have the same meaning as assigned to it under the Securities and Exchange Board of India (Substantial Acquisitions of Shares and Takeovers) Regulations, 2011;
- 9) “convertible debt instrument” means an instrument which creates or acknowledges indebtedness and is convertible into equity shares of the issuer at a later date at or without the option of the holder of the instrument, whether constituting a charge on the assets of the issuer or not;
- 10) “convertible security” means a security which is convertible into or exchangeable with equity shares of the issuer at a later date, with or without the option of the holder of such security and includes convertible debt instrument and convertible preference shares;
- 11) “designated stock exchange” means a recognised stock exchange having nationwide trading terminals chosen by the issuer on which securities of an issuer are listed or proposed to be listed for the purpose of a particular issue of specified securities under these regulations:

Provided that, the issuer may choose a different recognised stock exchange as a designated stock exchange for any subsequent issue of specified securities;

- 12) “draft letter of offer” means the draft letter of offer filed with the Board in relation to a rights issue under these regulations;
- 13) “draft offer document” means the draft offer document filed with the Board in relation to a public issue under these regulations;
- 14) “fugitive economic offender” shall mean an individual who is declared a fugitive economic offender under section 12 of the Fugitive Economic Offenders Act, 2018 (17 of 2018);
- 15) “further public offer” means an offer of specified securities by a listed issuer to the public for subscription and includes an offer for sale of specified securities to the public by any existing holders of such specified securities in a listed issuer;
- 16) “general corporate purposes” include such identified purposes for which no specific amount is allocated or any amount so specified towards general corporate purpose or any such purpose by whatever name called, in the draft offer document, draft letter of offer, the offer document, or the letter of offer:

Provided that any issue related expenses shall not be considered as a part of general corporate purpose merely because no specific amount has been allocated for such expenses in the draft offer document, draft letter of offer, the offer document, or the letter of offer;

- 17) “green shoe option” means an option of allotting equity shares in excess of the equity shares offered in the public issue as a post-listing price stabilizing mechanism;

- 18) "group companies", shall include such companies (other than promoter(s) and subsidiary/subsidiaries) with which there were related party transactions, during the period for which financial information is disclosed, as covered under the applicable accounting standards, and also other companies as considered material by the board of the issuer;
- 19) "housing finance company" means a deposit taking housing finance company registered with the National Housing Bank for carrying on the business of housing finance;
- 20) "initial public offer" means an offer of specified securities by an unlisted issuer to the public for subscription and includes an offer for sale of specified securities to the public by any existing holders of such specified securities in an unlisted issuer;
- 21) "innovators growth platform" means the trading platform for listing and trading of specified securities of issuers that comply with the eligibility criteria specified in regulation 283;
- 22) "institutional investor" means (i) qualified institutional buyer; or (ii) family trust or intermediaries registered with the Board, with net worth of more than five hundred crore rupees, as per the last audited financial statements, for the purposes of listing and/or trading on innovators growth platform in terms of Chapter X;
- 23) "issue size" includes offer through offer document and promoters' contribution brought in as part of the issue;
- 24) "issuer" means a company or a body corporate authorized to issue specified securities under the relevant laws and whose specified securities are being issued and/or offered for sale in accordance with these regulations;

- 25) “key managerial personnel” means the officers or personnel of the issuer who are members of its core management team (excluding board of directors) and includes members of the management one level below the executive directors of the issuer, functional heads and ‘key managerial personnel’ as defined under the Companies Act, 2013 or any other person whom the issuer may declare as a key managerial personnel;
- 26) “lead manager” means a merchant banker registered with the Board and appointed by the issuer to manage the issue and in case of a book-built issue, the lead manager(s) appointed by the issuer shall act as the book running lead manager(s) for the purposes of book building;
- 27) “listed issuer” means an issuer whose equity shares are listed on a recognised stock exchange having nationwide trading terminals;
- 28) “net offer” means an offer of specified securities to the public but does not include reservations and promoters’ contribution brought in as part of the issue;
- 29) “net tangible assets” mean the sum of all net assets of the issuer, excluding intangible assets as defined in Accounting Standard 26 (AS 26) or Indian Accounting Standard (Ind AS) 38, as applicable, issued by the Institute of Chartered Accountants of India;
- 30) “net worth” means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account and debit or credit balance of profit and loss account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of

revaluation of assets, write-back of depreciation and amalgamation;

- 31) “nominated investor” means a qualified institutional buyer or private equity fund, who enters into an agreement with the lead manager(s) to subscribe to an issue, made in accordance with Chapter IX, in case of under-subscription or to receive or deliver the specified securities in the market-making process in such an issue;

“private equity fund” means a fund registered with any regulatory authority or a fund established by any person registered with any regulatory authority;

- 32) “non-institutional investor” means an investor other than a retail individual investor and qualified institutional buyer;

- 33) “offer document” means a red herring prospectus, prospectus or shelf prospectus, as applicable, referred to under the Companies Act, 2013, in case of a public issue, and a letter of offer in case of a rights issue;

- 34) “preferential issue” means an issue of specified securities by a listed issuer to any select person or group of persons on a private placement basis in accordance with Chapter V of these regulations and does not include an offer of specified securities made through employee stock option scheme, employee stock purchase scheme or an issue of sweat equity shares or depository receipts issued in a country outside India or foreign securities;

- 35) “public issue” means an initial public offer or a further public offer;

- 36) “retail individual investor” means an individual investor who applies or bids for specified securities for a value of not more than two lakh rupees;

- 37) “rights issue” means an offer of specified securities by a listed issuer to the shareholders of the issuer as on the record date fixed for the said purpose;
- 38) “securities laws” means the Act, the Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996 and the rules and regulations made thereunder, and the general or special orders, guidelines or circulars made or issued by the Board thereunder and the provisions of the Companies Act, 2013 or any previous company law and any subordinate legislation framed thereunder, which are administered by the Board;
- 39) “SR equity shares” means the equity shares of an issuer having superior voting rights compared to all other equity shares issued by that issuer;
- 40) “stock exchange” means any recognised stock exchange having nationwide trading terminals chosen by the issuer on which securities of an issuer are listed or proposed to be listed for the purpose of a particular issue of specified securities under these regulations, other than an SME exchange;
- 41) “valuer” means a person who is registered under section 247 of the Companies Act, 2013 and the relevant rules framed thereunder or as specified by the Board;
- 42) “wilful defaulter or a fraudulent borrower” means a person or an issuer who or which is categorized as a wilful defaulter or a fraudulent borrower by any bank or financial institution (as defined under the Companies Act, 2013) or consortium thereof, in accordance with the guidelines on wilful defaulters or fraudulent borrowers issued by the Reserve Bank of India;

Inclusions in the Offer Letter

The following shall be included in the letter of offer. Issuers may voluntarily include additional financial statements, including three years of audited financial statements (but not more than three years), additional stub periods and audited standalone financial statements.

- Report of statutory auditors on the financial statements
- Balance sheets
- Statements of income
- Schedules to accounts
- Statements of changes in stockholders' equity
- Statements of cash flows
- Statement of accounting policies
- Notes to financial statements
- Accounting Ratios
 - Earnings per share (Basic and Diluted)
 - Return on net worth
 - Net Asset Value per Share
 - EBITDA

SCHEDULE VI - DISCLOSURES IN THE OFFER DOCUMENT, ABRIDGED PROSPECTUS AND ABRIDGED LETTER OF OFFER

Important Instructions:

- All information shall be relevant and updated. The source and basis of all statements and claims shall be disclosed. Terms such as “market leader”, “leading player”, etc. shall be used only if these can be substantiated by citing a proper source.
- All blank spaces in the draft offer document shall be filled up with appropriate data before filing the offer document, as applicable, with the Registrar of Companies or filing the same with the recognised stock exchanges.

- Simple English shall be used to enable easy understanding of the contents. Technical terms, if any, used in explaining the business of the issuer shall be clarified in simple terms.
- Wherever it is mentioned that details are given elsewhere in the document, the same shall be adequately cross-referenced by indicating the paragraph heading and page number.
- There shall be no forward-looking statements that cannot be substantiated.
- Consistency shall be ensured in the style of disclosures. If first person is used, the same may be used throughout. Sentences that contain a combination of first and third persons may be avoided.
- For currency of presentation, only one standard financial unit shall be used.

Important Disclosures

- Size of the issue disclosing separately size of the fresh issue and offer for sale.
- Objects of the issue in a tabular format.
- Aggregate pre-issue shareholding of the promoter and promoter group, selling shareholder(s) as a percentage of the paid-up share capital of the issuer.
- Following details as per the restated consolidated financial statements for past 3 years and stub period in tabular format:
 - Share capital;
 - Net Worth;
 - Revenue;
 - Profit after tax;

- Earnings per share;
 - Net Asset Value per equity share; and
 - Total borrowings (as per balance sheet).
- Weighted average price at which specified security was acquired by each of the promoters and selling shareholders in the last one year.
- Average cost of acquisition of shares for promoter and selling shareholders.
- Size of the pre-IPO placement and allottees, upon completion of the placement.
- Any issuances of equity shares made in the last one year for consideration other than cash.
- Any split/consolidation of equity shares in the last one year.

Disclosures - Basis for Issue Price

(1) The basis for issue price, floor price or price band, as the case may be, on a consolidated basis, after giving effect to any bonus or split of shares undertaken after the last balance sheet date.

- (a) Earnings Per Share and Diluted Earnings Per Share, pre-issue, for the last three years (as adjusted for changes in capital).
- (b) Price to Earnings ratio pre-issue.
- (c) Average Return on Net Worth in the last three years.
- (d) Net Asset Value per share based on the last balance sheet.
- (e) Net Asset Value per share after the issue and comparison thereof with the issue price.

(f) An illustrative format of disclosure in respect of the basis for issue price is given hereunder:

(1)	Adjusted Earnings Per Share (EPS) and Adjusted Diluted EPS	
	(a) Financial Year 1	Rs. 0.41
	(b) Financial Year 2	Rs. 8.39
	(c) Financial Year 3	Rs. 13.82
	(d) Weighted Average	Rs. 10.94
(2)	Price to Earnings Ratio (P/E) in relation to Issue Price	
	(a) Based on Financial Year 3 EPS	37.63
	(b) Industry P/E	
	(i) Highest	61.2
	(ii) Lowest	0.8
	(iii) Average	25.3
	(*Indicate relevant source)	
(3)	Return on Net Worth	
	(a) Financial Year 1	27.36 per cent
	(b) Financial Year 2	28.77 per cent
	(c) Financial Year 3	33.45 per cent
	(d) Weighted Average	30.88 per cent
(4)	Net Asset Value	
	(a) As at last day of Financial Year 3	Rs. 46.40
	(b) After issue	Rs. 94.29
	(c) Issue price	Rs. 520.00

** Formula or basis for calculation of these financial ratios to also be disclosed.*

(g) Comparison of accounting ratios of the issuer as mentioned in items (a) to (f) above with the industry average and with the accounting ratios of the peer group (i.e. companies of comparable size in the same industry), indicating the source from which industry average and accounting ratios of the peer group has been taken. In this regard, the following shall be ensured:

- Consistency in comparison of financial ratios of issuer with companies in the peer group, i.e., ratios on consolidated basis (wherever applicable) of issuer shall be compared with ratios on consolidated basis (wherever applicable) of peer group, respectively.

Financial information relating to companies in the peer group shall be extracted from the regulatory filings made by such companies to compute the corresponding financial ratios.

(h) The fact of dilution of financial ratios consequent upon issue of bonus shares, if any, and justification of the issue price after taking into account the diluted ratios with reference to the expanded capital.

(i) The following statement in case of a book-built issue:

"The price band/floor price/issue price has been determined by the issuer in consultation with the lead manager(s), on the basis of book-building."

(j) The following statement in case of a fixed price issue:

"The issue price has been determined by the issuer in consultation with the lead manager(s) and justified by the issuer in consultation with the lead manager(s) on the basis of the above information."

(k) Accounting ratios in support of basis for the issue price shall be calculated after giving effect to the consequent increase in

capital on account of compulsory conversions outstanding, as well as on the assumption that the options outstanding, if any, to subscribe for additional capital will be exercised.

(2) Issue of debt instruments bearing interest less than the bank rate: Whenever fully convertible debt instruments are issued bearing interest at a rate less than the bank rate, disclosures about the price that would work out to the investor, taking into account the notional interest loss on the investment from the date of allotment of fully convertible debt instruments to the date(s) of conversions.

¹(3) For all the Key Performance Indicators (KPIs) disclosed in the offer document, the Issuer Company and the lead merchant bankers (LMs) shall ensure the following:

- (a) KPIs disclosed in the offer document and the terms used in KPIs shall be defined consistently and precisely in the “Definitions and Abbreviations” section of the offer document using simple English terms /phrases so as to enable easy understanding of the contents. Technical terms, if any, used in explaining the KPIs shall be further clarified in simple terms.
- (b) KPIs disclosed in the offer document shall be approved by the Audit Committee of the Issuer Company.
- (c) KPIs disclosed in the offer document shall be certified by the statutory auditor(s) or Chartered Accountants or firm of Chartered Accountants, holding a valid certificate issued by the Peer Review Board of the Institute of Chartered Accountants of India or by Cost Accountants, holding a

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valid certificate issued by the Peer Review Board of the Institute of Cost Accountants of India.

- (d) Certificate issued with respect to KPIs shall be included in the list of material documents for inspection.
- (e) For each KPI being disclosed in the offer document, the details thereof shall be provided for period which will be co-terminus with the period for which the restated financial information is disclosed in the offer document.
- (f) KPIs disclosed in the offer document should be comprehensive and explanation shall be provided on how these KPIs have been used by the management historically to analyse, track or monitor the operational and/or financial performance of the Issuer Company.
- (g) Comparison of KPIs over time shall be explained based on additions or dispositions to the business, if any. For e.g. in case the Issuer Company has undertaken a material acquisition or disposition of assets / business for the periods that are covered by the KPIs, the KPIs shall reflect and explain the same.
- (h) For 'Basis for Issue Price' section, the following disclosures shall be made:
 - (i) Disclosure of all the KPIs pertaining to the Issuer Company that have been disclosed to its investors at any point of time during the three years preceding to the date of filing of the DRHP / RHP.
 - (ii) Confirmation by the Audit Committee of the Issuer Company that verified and audited details for all the KPIs pertaining to the Issuer Company that have been disclosed to the earlier investors at any point of time during the three years period prior to the

date of filing of the DRHP / RHP are disclosed under 'Basis for Issue Price' section of the offer document.

- (iii) Issuer Company in consultation with the lead merchant banker may make disclosure of any other relevant and material KPIs of the business of the Issuer Company as it deems appropriate that have a bearing for arriving at the basis for issue price.
- (iv) Cross reference of KPIs disclosed in other sections of the offer document to be provided in the 'Basis for Issue Price' section of the offer document.
- (v) For the KPIs disclosed under the 'Basis for Issue Price' section, disclosure of the comparison with Indian listed peer companies and/ or global listed peer companies, as the case may be (wherever available). The set of peer companies shall include companies of comparable size, from the same industry and with similar business model (if one to one comparison is not possible, appropriate notes to explain the differences may be included).
- (i) The Issuer Company shall continue to disclose the KPIs which were disclosed in the 'Basis for Issue Price' section of the offer document, on a periodic basis, at least once in a year (or for any lesser period as determined by the Issuer Company), for a duration that is at least the later of (i) one year after the listing date or period specified by the Board; or (ii) till the utilization of the issue proceeds as per the disclosure made in the objects of the issue section of the prospectus. Any change in these KPIs, during the aforementioned period, shall be explained by the Issuer Company. The ongoing KPIs shall continue to be certified by a member of an expert body as per clause 3(c).

(4) For issue price, floor price or price band, as the case may be, disclosed in the offer document, the Issuer Company and the lead merchant banker (LMs) shall disclose the details with respect to the following:

- (a) Price per share of Issuer Company based on primary / new issue of shares (equity/convertible securities), excluding shares issued under ESOP/ESOS and issuance of bonus shares, during the 18 months preceding the date of filing of the DRHP / RHP, where such issuance is equal to or more than 5 per cent of the fully diluted paid-up share capital of the Issuer Company (calculated based on the pre-issue capital before such transaction/s and excluding employee stock options granted but not vested), in a single transaction or multiple transactions combined together over a span of rolling 30 days; and
- (b) Price per share of Issuer Company based on secondary sale / acquisition of shares (equity/convertible securities), where promoter / promoter group entities or shareholder(s) selling shares through offer for sale in IPO or shareholder(s) having the right to nominate director(s) in the Board of the Issuer Company are a party to the transaction (excluding gifts), during the 18 months preceding the date of filing of the DRHP / RHP, where either acquisition or sale is equal to or more than 5 per cent of the fully diluted paid-up share capital of the Issuer Company (calculated based on the pre issue capital before such transaction/s and excluding employee stock options granted but not vested), in a single transaction or multiple transactions combined together over a span of rolling 30 days.

Note:

1. In case there are no such transactions to report under (a) and (b), then the information shall be disclosed for price per share of the Issuer Company based on last 5 primary or secondary transactions (secondary transactions where promoter / promoter group entities or shareholder(s) selling shares through offer for sale in IPO or shareholder(s) having the right to nominate director(s) in the Board of the Issuer Company, are a party to the transaction), not older than 3 years prior to the date of filing of the DRHP / RHP, irrespective of the size of transactions.

2. Price per share disclosed, shall be adjusted for corporate actions e.g. split, bonus etc. done by the Issuer Company.

(c) Floor price and cap price being [●] times the weighted average cost of acquisition (WACA) based on primary/ secondary transaction(s) as disclosed in terms of clause (a) and (b) or Note 1 above, shall be disclosed in the following manner:

Past Transactions	WACA (in Rs.)	IPO Floor Price in Rs. [●]	IPO Cap Price in Rs. [●]
WACA of Primary issuance		[●] times	[●] times
WACA of Secondary transactions		[●] times	[●] times

(d) Detailed explanation for offer price / cap price being [●] times of WACA of Primary issuance price / Secondary transaction price, along with comparison of Issuer Company's KPIs and financials ratios for the last three full

financial years and stub period (if any) included in the offer document.

- (e) Explanation for offer price / cap price being [●] times of WACA of Primary issuance price / Secondary transaction price in view of the external factors which may have influenced the pricing of the issue, if any.
- (f) Table at para (c) above shall be disclosed in the Price Band Advertisement under 'Risks to Investors' section. Recommendation of a Committee of Independent Directors to be included in the price band advertisement stating that the price band is justified based on quantitative factors / KPIs disclosed in 'Basis for Issue Price' section vis-à-vis the WACA of primary issuance / secondary transaction(s) disclosed in 'Basis for Issue Price' section.]

Disclosures - Financial Statements:

(I) Requirements in case Indian Accounting Standards (Ind AS) is applicable in the latest period presented in Restated Financial Information

Financial information section of the offer document will be divided into two parts, viz., restated financial information and other financial information. The restated and other financial information should be complete in all respects. To avoid duplication of disclosures in the offer document, appropriate use of cross reference may be made to the restated and other financial information.

(A) Restated Financial information

- (i) Consolidated Financial Statements (CFS) prepared in accordance with Ind AS [*Indian GAAP*] for three years and the stub period (if applicable) should be audited and certified by the statutory auditor(s) or Chartered Accountants who holds a valid

certificate issued by the Peer Review Board of the Institute of Chartered Accountants of India (ICAI). The stub period CFS shall be required, if Ind AS [*Indian GAAP*] CFS for latest full financial year included in the offer document is older than six months from the date of filing of the draft offer document/offer document. The stub period should not end up to a date earlier than six months of the date of filing of the draft offer document/offer document. In accordance with Ind AS 34 [*AS 25*] Interim Financial Reporting, the group should present a complete Ind AS CFS for the stub period, except the issuer has been exempted from presenting comparatives for the stub period. CFS shall be prepared as per Companies Act, 2013 (as amended).

- (a) The CFS (including for the stub period if applicable) should be restated to ensure consistency of presentation, disclosures and the accounting policies for all the periods presented in line with that of the latest financial year/ stub period presented. Similarly, significant errors, non-provisions, regrouping, other adjustments, if any, should be reflected in the corresponding period. The changes in accounting policies and the correction of errors, should be disclosed in accordance with the requirements of Ind AS 8 Accounting Policies, Changes in Accounting Estimates and Errors. Changes in estimates, if any, need not to be restated, as they are events of that corresponding year. The issuer has an option to present comparatives for the stub period.
- (b) SA 705 Modification to the Opinion in the Independent Auditor's Report requires a qualified opinion, adverse opinion or disclaimer of opinion for material misstatements. With respect to an eligible issuer, audit modifications, which are quantifiable or can be estimated shall be adjusted in the restated financial information in the appropriate period. In situations where the

qualification cannot be quantified or estimated, appropriate disclosures should be made in the notes to account, explaining why the qualification cannot be quantified or estimated.

- (c) A reconciliation explaining the differences between the audited CFS equity and profit (loss) and the restated CFS should be presented in a columnar format.
- (d) The auditor or Chartered Accountants shall issue an examination report on the restated and audited financial information in accordance with the *Guidance Note* issued by the ICAI from time to time.
- (e) Auditor should have a valid peer review certificate issued by the Peer Review Board of the ICAI as on the date of signing the restated financial information. If a new auditor holding a valid peer review certificate is appointed for the stub period, and the predecessor auditor did not hold a valid peer review certificate at the date of signing the last annual financial statement, then the last annual financial statement would need to be re-audited by the new auditor in accordance with applicable standards. The re-audit may exclude audit reporting matters on CARO, internal financial control and other pure regulatory matters. Where auditor earlier held a valid peer review certificate but did not hold a valid certificate at the date of signing the restated financial information, the earlier certificate shall be considered valid provided there is no express refusal by the peer review board to renew the certificate and the process to renew the peer review certificate was initiated by the auditor.
- (f) Where an issuer does not have a subsidiary, associate or joint venture, in any financial year, the issuer shall present

separate financial statements for that financial year by following the applicable requirements of a restated CFS.

(g) List of the related parties and all related party transactions of the consolidated entities (whether eliminated on consolidation or not), which require disclosure under Ind AS 24 and/ or covered under section 188(2) of the Companies Act, 2013 (as amended), as disclosed in the separate financial statement of the consolidated entities, should be disclosed in the restated financial information.

- All funding arrangements including inter-se guarantees among the entities consolidated; except contribution to equity share capital, shall be disclosed. The important terms and conditions of the funding arrangement and fund transfer restrictions, if any, should be disclosed in the restated financial information.

(h) In case where Ind AS is not applicable to the Company for any of the years the principles laid down in Circular No SEBI/HO/CFD/DIL/CIR/P/2016/47 of March 31, 2016 or any other relevant circular issued by the Board from time to time, shall apply.

(i) The separate audited financial statements for past three full financial years immediately preceding the date of filing of offer document of the issuer company and all its material subsidiaries should be made available on issuer's website in accordance with the materiality thresholds in (b) below. Alternatively, relevant link should be provided to the financial statement of subsidiaries on the Issuer's website. The link to the issuer's separate financial statement should be specified in the offer document. For this purpose, subsidiaries shall be identified based on definitions in the Companies Act, 2013. The above requirements shall apply for the periods of existence of the parent-subsidiary relationship.

- (a) A certified English translated copy of the financial statements should be made available on the Company's website for every entity consolidated whose financial statements are not presented in English.
- (b) The financial statements reported in any currency other than Indian Rupee shall be translated into Indian Rupee in accordance with Ind AS 21. The Effects of Changes in Foreign Exchange Rates. The financial statements of all foreign consolidated entities should be audited, unless they are not material to the CFS and the local regulation does not mandate audit. For this purpose, a consolidated entity shall be considered 'material' if it contributes 10% or more to the turnover or net-worth or profits before tax in the annual CFS of the respective year. Additionally, total unaudited information included in the in the CFS shall not exceed 20% of the turnover or net-worth or profits before tax of the CFS of the respective year. For the purpose of this clause, definition of turnover, net-worth and profits before tax should be as per Companies Act, 2013 (as amended).
- (c) The financial statements of foreign entities consolidated may be audited as per the requirements of local regulation applicable in the respective jurisdiction. However, in cases where the local regulation does not mandate audit, financial statements should be audited as per the auditing standards/ requirements applicable in India.
- (d) The financial statements of foreign subsidiaries may be acceptable in a GAAP other than Ind AS, if local laws require application of local GAAP.

(B) Other Financial Information

(i) The following information shall be computed as per the *Guidance Note* issued by the ICAI from time to time and disclosed in other financial information

- Earnings per share (Basic and Diluted)
- Return on net worth
- Net Asset Value per share
- EBITDA

(ii) If the proceeds, fully or partly, directly or indirectly, is to be used for acquisition of one or more material businesses or entities, the audited statements of balance sheets, profit and loss, cash flow for the latest three financial years and stub period (if available) prepared as per framework applicable to the business or subsidiary proposed to be acquired shall be included in the draft offer document/offer document. For this purpose, the proposed acquisition (covering all businesses or subsidiaries proposed to be acquired) shall be considered material if it will make 20% or more contribution in aggregate to either turnover, or net worth or profit before tax in the latest annual CFS. The issuer may voluntarily choose to provide financial statements of above acquisitions out of the proceeds of the issue even if they are below the above materiality threshold. In cases where the general-purpose financial statement of the businesses/entities to be acquired/divested are not available, combined/carved-out financial statements for that business/entity shall be prepared in accordance with Guidance Note issued by the ICAI from time to time. The combined/carved-out financial statements shall be audited by the auditor of the seller in accordance with applicable framework.

(iii) Proforma financial statements – The Issuer shall provide Proforma financial statements, as certified by the statutory auditor or chartered accountants, who hold a valid certificate issued by the Peer Review Board of the Institute of Chartered

Accountants of India (ICAI), of all the subsidiaries or businesses material to the consolidated financial statements where the issuer or its subsidiaries have made an acquisition or divestment including deemed disposal after the latest period for which financial information is disclosed in the offer document but before the date of filing of the offer document. For this purpose, the acquisition/divestment would be considered as material if acquired/ divested business or subsidiary in aggregate contributes 20% or more to turnover, net worth or profit before tax in the latest annual CFS of the issuer. The Proforma financial statements shall be prepared for the last completed financial year and the stub period (if any). The Proforma financial statements shall be prepared in accordance with Guidance Note issued by the ICAI from time to time and certified by the statutory auditor. The issuer Company may voluntarily choose to provide proforma financial statements of acquisitions even when they are below the above materiality threshold. In case of one or more acquisitions or divestments, one combined set of Proforma financial statements should be presented. Where the businesses acquired/ divested does not represent a separate entity, general purpose financial statement may not be available for such business. In such cases, combined/ carved-out financial statements for such businesses shall be prepared in accordance with Guidance Note issued by the ICAI from time to time. Further, in case of non-material acquisitions/divestments disclosures in relation to the fact of the acquisition/divestment, consideration paid/received, and mode of financing shall be certified by the statutory auditor of the issuer company or chartered accountants, who hold a valid certificate issued by the Peer Review Board of the Institute of Chartered Accountants of India (ICAI) appointed by the issuer company.

(C) Management's Discussion and Analysis of Financial Position and Results of Operations as reflected in the restated Ind AS CFS shall be provided in other financial information.

(i) Significant developments subsequent to the last financial year or when applicable subsequent to the stub period: A statement by the directors whether in their opinion there have arisen any circumstances since the date of the last financial statements as disclosed in the offer document and which materially and adversely affect or is likely to affect within the next twelve months:

- a. the trading or profitability of the issuer; or
- b. the value of its assets; or
- c. its ability to pay its liabilities.

(ii) Factors that may affect the results of operations.

(iii) Discussion on the results of operations: This information shall inter-alia contain the following:

- a. A summary of the past financial results after adjustments as given in the restated financial statements for the past three full financial years and the stub period (if any) containing significant items of income and expenditure shall be given.
- b. A summary of major items of income and expenditure for the last three years and most recent audit period.
- c. The income and sales on account of major product/ main activities.
- d. In case, the other income constitutes more than 10% of the total income, the break-up of the same along with the nature of the income, i.e., recurring or non-recurring shall be stated.

- e. If a material part of the income is dependent upon a single customer/supplier or a few major customers/suppliers, disclosure of this fact along with relevant data. Similarly if any foreign customer/supplier constitutes a significant portion of the issuer's business, disclosure of the fact along with its impact on the business on account of exchange rate fluctuations.
 - f. In case the issuer has deviated from applicable accounting standards for recording sales and revenues, its impact may be analysed and disclosed.
 - g. The nature of miscellaneous income and miscellaneous expenditure for the interim period and the preceding years
- (iv) Comparison of last three years and the stub period on the major heads of the profit and loss statement, including an analysis of reasons for the changes in significant items of income and expenditure shall also be given, inter-alia, containing the following:
- a. unusual or infrequent events or transactions including unusual trends on account of business activity, unusual items of income, change of accounting policies and discretionary reduction of expenses etc.
 - b. significant economic changes that materially affected or are likely to affect income from continuing operations;
 - c. known trends or uncertainties that have had or are expected to have a material adverse impact on sales, revenue or income from continuing operations;
 - d. expected future changes in relationship between costs and revenues, in case of events such as future increase in labour or material costs or prices that will cause a material change are known;

- e. the extent to which material increases in net sales or revenue are due to increased sales volume, introduction of new products or services or increased sales prices;
- f. total turnover of each major industry segment in which the issuer operated;
- g. status of any publicly announced new products or business segment, if applicable;
- h. the extent to which business is seasonal;
- i. any significant dependence on a single or few suppliers or customers;
- j. competitive conditions.

(v) Management's Discussion and Analysis shall be based on the restated financial information for the last three years and the stub period.

(D) Capitalisation statement

(i) Capitalisation Statement showing total borrowings, total equity, and the borrowing/ equity ratios before and after the issue is made shall be incorporated. It shall be prepared on the basis of the restated CFS for the latest financial year or when applicable at the end of the stub period.

(ii) In case of any change in the share capital since the date as of which the financial information has been disclosed in the offer document, a note explaining the nature of the change shall be given.

(iii) An illustrative format of the Capitalisation Statement is specified hereunder

Particulars	Pre-issue at	As adjusted for
-------------	--------------	-----------------

		the proposed issue
(Rs. In crores)		
Total borrowings		
Current borrowings*		
Non-current borrowings (including current maturity)*		
Total equity		
Equity share capital*		
Other equity		
Total Capital		
Ratio: Non-current borrowings / Total equity		

**These terms shall carry the meaning as per Schedule III of the Companies Act, 2013 (as amended)*

Similar requirements are applicable

- In case Indian GAAP is applicable in the latest period presented in Restated Financial Information; and
- Financial information of the Issuer in further public offers.

Appendix-II

RELEVANT EXTRACTS OF THE COMPANIES ACT, 2013

Section 2. Definitions

In this Act, unless the context otherwise requires,—

(1) “abridged prospectus” means a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulations in this behalf;

(70) “prospectus” means any document described or issued as a prospectus and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in section 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of body corporate;

(71) “public company” means a company which—

(a) is not a private company and;

(b) has a minimum paid-up share capital as may be prescribed:

Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles ;

(73) “recognised stock exchange” means a recognised stock exchange as defined in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(81) “securities” means the securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(82) “Securities and Exchange Board” means the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);

(84) “share” means a share in the share capital of a company and includes stock;

Section 13. Alteration of Memorandum

(8) A company, which has raised money from public through prospectus and still has any unutilised amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution is passed by the company and—

(i) the details, as may be prescribed, in respect of such resolution shall also be published in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating therein the justification for such change;

(ii) the dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with regulations to be specified by the Securities and Exchange Board.

Section 23. Public Offer and Private Placement

(1) A public company may issue securities—

(a) to public through prospectus (herein referred to as "public offer") by complying with the provisions of this Part; or

(b) through private placement by complying with the provisions of Part II of this Chapter; or

(c) through a rights issue or a bonus issue in accordance with the provisions of this Act and in case of a listed company or a company which intends to get its securities listed also with the provisions of the Securities and Exchange Board of India Act, 1992 (15 of 1992) and the rules and regulations made thereunder.

(2) A private company may issue securities—

(a) by way of rights issue or bonus issue in accordance with the provisions of this Act; or

(b) through private placement by complying with the provisions of Part II of this Chapter.

(3) Such class of public companies may issue such class of securities for the purposes of listing on permitted stock exchanges in permissible foreign jurisdictions or such other jurisdictions, as may be prescribed.

(4) The Central Government may, by notification, exempt any class or classes of public companies referred to in sub-section (3) from any of the provisions of this Chapter, Chapter IV, section 89, section 90 or section 127 and a copy of every such notification shall, as soon as may be after it is issued, be laid before both Houses of Parliament.

Explanation.—For the purposes of this Chapter, “public offer” includes initial public offer or further public offer of securities to the public by a company, or an offer for sale of securities to the public by an existing shareholder, through issue of a prospectus.

Section 24. Power of Securities and Exchange Board to Regulate Issue and Transfer of Securities, etc.

(1) The provisions contained in this Chapter, Chapter IV and in section 127 shall,—

(a) in so far as they relate to —

(i) issue and transfer of securities; and

(ii) non-payment of dividend,

by listed companies or those companies which intend to get their securities listed on any recognised stock exchange in India, except as provided under this Act, be administered by the Securities and Exchange Board by making regulations in this behalf;

(b) in any other case, be administered by the Central Government.

Explanation.—For the removal of doubts, it is hereby declared that all powers relating to all other matters relating to prospectus, return of allotment, redemption of preference shares and any other matter specifically provided in this Act, shall be exercised by the Central Government, the Tribunal or the Registrar, as the case may be.

(2) The Securities and Exchange Board shall, in respect of matters specified in sub-section (1) and the matters delegated to it under proviso to sub-section (1) of section 458, exercise the powers conferred upon it under sub-sections (1), (2A), (3) and (4) of section 11, sections 11A, 11B and 11D of the Securities and Exchange Board of India Act, 1992 (15 of 1992).

Section 25. Document Containing Offer of Securities for Sale to be Deemed Prospectus

(1) Where a company allots or agrees to allot any securities of the company with a view to all or any of those securities being offered for sale to the public, any document by which the offer for sale to the public is made shall, for all purposes, be deemed to be a prospectus issued by the company; and all enactments and rules

of law as to the contents of prospectus and as to liability in respect of mis-statements, in and omissions from, prospectus, or otherwise relating to prospectus, shall apply with the modifications specified in sub-sections (3) and (4) and shall have effect accordingly, as if the securities had been offered to the public for subscription and as if persons accepting the offer in respect of any securities were subscribers for those securities, but without prejudice to the liability, if any, of the persons by whom the offer is made in respect of mis-statements contained in the document or otherwise in respect thereof.

(2) For the purposes of this Act, it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, securities was made with a view to the securities being offered for sale to the public if it is shown—

(a) that an offer of the securities or of any of them for sale to the public was made within six months after the allotment or agreement to allot; or

(b) that at the date when the offer was made, the whole consideration to be received by the company in respect of the securities had not been received by it.

(3) Section 26 as applied by this section shall have effect as if —

(i) it required a prospectus to state in addition to the matters required by that section to be stated in a prospectus—

(a) the net amount of the consideration received or to be received by the company in respect of the securities to which the offer relates; and

(b) the time and place at which the contract where under the said securities have been or are to be allotted may be inspected;

(ii) the persons making the offer were persons named in a prospectus as Directors of a company.

(4) Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document referred to in sub-section (1) is signed on behalf of the company or firm by two Directors of the company or by not less than one-half of the partners in the firm, as the case may be.

Section 26. Matters to be Stated in Prospectus

(4) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless on or before the date of its publication, there has been delivered to the Registrar for filing, a copy thereof signed by every person who is named therein as a director or proposed director of the company or by his duly authorised attorney.

(5) A prospectus issued under sub-section (1) shall not include a statement purporting to be made by an expert unless the expert is a person who is not, and has not been, engaged or interested in the formation or promotion or management, of the company and has given his written consent to the issue of the prospectus and has not withdrawn such consent before the delivery of a copy of the prospectus to the Registrar for filing and a statement to that effect shall be included in the prospectus.

(6) Every prospectus issued under sub-section (1) shall, on the face of it,—

(a) state that a copy has been delivered for filing to the Registrar as required under sub-section (4); and

(b) specify any documents required by this section to be attached to the copy so delivered or refer to statements included in the prospectus which specify these documents.

Section 27. Variation in Terms of Contract or Objects in Prospectus

(1) A company shall not, at any time, vary the terms of a contract referred to in the prospectus or objects for which the prospectus was issued, except subject to the approval of, or except subject to an authority given by the company in general meeting by way of special resolution:

Provided that the details, as may be prescribed, of the notice in respect of such resolution to shareholders, shall also be published in the newspapers (one in English and one in vernacular language) in the city where the registered office of the company is situated indicating clearly the justification for such variation:

Provided further that such company shall not use any amount raised by it through prospectus for buying, trading or otherwise dealing in equity shares of any other listed company.

(2) The dissenting shareholders being those shareholders who have not agreed to the proposal to vary the terms of contracts or objects referred to in the prospectus, shall be given an exit offer by promoters or controlling shareholders at such exit price, and in such manner and conditions as may be specified by the Securities and Exchange Board by making regulations in this behalf.

Section 28. Offer of Sale of Shares by Certain Members of Company

(1) Where certain members of a company propose, in consultation with the Board of Directors to *offer, in accordance with the provisions of any law for the time being in force, whole or part of their holding of shares to the public*, they may do so in accordance with such procedure as may be prescribed.

(2) Any document by which the offer of sale to the public is made shall, for all purposes, be deemed to be a prospectus issued by the company and all laws and rules made thereunder as to the contents of the prospectus and as to liability in respect of misstatements in and omission from prospectus or otherwise relating to prospectus shall apply as if this is a prospectus issued by the company.

(3) The members, whether individuals or bodies corporate or both, whose shares are proposed to be offered to the public, shall collectively authorise the company, whose shares are offered for sale to the public, to take all actions in respect of offer of sale for and on their behalf and they shall reimburse the company all expenses incurred by it on this matter.

Section 29. Public Offer of Securities to be in Dematerialised Form.

(1) Notwithstanding anything contained in any other provisions of this Act,—

(a) every company making public offer; and

(b) such other class or classes of public companies as may be prescribed,

shall issue the securities only in dematerialised form by complying with the provisions of the Depositories Act, 1996 (22 of 1996) and the regulations made thereunder.

(1A) In case of such class or classes of unlisted companies as may be prescribed, the securities shall be held or transferred only in dematerialised form in the manner laid down in the Depositories Act, 1996 and the regulations made thereunder.

(2) Any company, other than a company mentioned in sub-section (1), may convert its securities into dematerialised form or

issue its securities in physical form in accordance with the provisions of this Act or in dematerialised form in accordance with the provisions of the Depositories Act, 1996 (22 of 1996) and the regulations made thereunder.

Section 30. Advertisement of Prospectus

Where an advertisement of any prospectus of a company is published in any manner, it shall be necessary to specify therein the contents of its memorandum as regards the objects, the liability of members and the amount of share capital of the company, and the names of the signatories to the memorandum and the number of shares subscribed for by them, and its capital structure.

Section 31. Shelf Prospectus.

(1) Any class or classes of companies, as the Securities and Exchange Board may provide by regulations in this behalf, may file a shelf prospectus with the Registrar at the stage of the first offer of securities included therein which shall indicate a period not exceeding one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under that prospectus, and in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required.

(2) A company filing a shelf prospectus shall be required to file an information memorandum containing all material facts relating to new charges created, changes in the financial position of the company as have occurred between the first offer of securities or the previous offer of securities and the succeeding offer of securities and such other changes as may be prescribed, with the Registrar within the prescribed time, prior to the issue of a

second or subsequent offer of securities under the shelf prospectus:

Provided that where a company or any other person has received applications for the allotment of securities along with advance payments of subscription before the making of any such change, the company or other person shall intimate the changes to such applicants and if they express a desire to withdraw their application, the company or other person shall refund all the monies received as subscription within fifteen days thereof.

(3) Where an information memorandum is filed, every time an offer of securities is made under sub-section (2), such memorandum together with the shelf prospectus shall be deemed to be a prospectus.

Explanation.—For the purposes of this section, the expression “shelf prospectus” means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus.

Section 32. Red Herring Prospectus

(1) A company proposing to make an offer of securities may issue a red herring prospectus prior to the issue of a prospectus.

(2) A company proposing to issue a red herring prospectus under sub-section (1) shall file it with the Registrar at least three days prior to the opening of the subscription list and the offer.

(3) A red herring prospectus shall carry the same obligations as are applicable to a prospectus and any variation between the red herring prospectus and a prospectus shall be highlighted as variations in the prospectus.

(4) Upon the closing of the offer of securities under this section, the prospectus stating therein the total capital raised, whether by way of debt or share capital, and the closing price of the securities and any other details as are not included in the red herring prospectus shall be filed with the Registrar and the Securities and Exchange Board.

Explanation.—For the purposes of this section, the expression "red herring prospectus" means a prospectus which does not include complete particulars of the quantum or price of the securities included therein.

Section 33. Issue of Application Forms for Securities.

(1) No form of application for the purchase of any of the securities of a company shall be issued unless such form is accompanied by an abridged prospectus:

Provided that nothing in this sub-section shall apply if it is shown that the form of application was issued—

(a) in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect to such securities; or

(b) in relation to securities which were not offered to the public.

(2) A copy of the prospectus shall, on a request being made by any person before the closing of the subscription list and the offer, be furnished to him.

(3) If a company makes any default in complying with the provisions of this section, it shall be liable to a penalty of fifty thousand rupees for each default.

Section 34. Criminal Liability for Mis-statements in Prospectus

Where a prospectus, issued, circulated or distributed under this Chapter, includes any statement which is untrue or misleading in

form or context in which it is included or where any inclusion or omission of any matter is likely to mislead, every person who authorizes the issue of such prospectus shall be liable under section 447:

Provided that nothing in this section shall apply to a person if he proves that such statement or omission was immaterial or that he had reasonable grounds to believe and did up to the time of issue of the prospectus believe, that the statement was true, or the inclusion or omission was necessary.

Section 35. Civil Liability for Mis-statements in Prospectus

(1) Where a person has subscribed for securities of a company acting on any statement included, or the inclusion or omission of any matter, in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person who—

(a) is a director of the company at the time of the issue of the prospectus;

(b) has authorised himself to be named and is named in the prospectus as a director of the company, or has agreed to become such director, either immediately or after an interval of time;

(c) is a promoter of the company;

(d) has authorised the issue of the prospectus; and

(e) is an expert referred to in sub-section (5) of section 26,

shall, without prejudice to any punishment to which any person may be liable under section 36, be liable to pay compensation to every person who has sustained such loss or damage.

(2) No person shall be liable under sub-section (1), if he proves—

(a) that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or

(b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.

(c) that, as regards every misleading statement purported to be made by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that the said person had given the consent required by sub-section (5) of section 26 to the issue of the prospectus and had not withdrawn that consent before filing of a copy of the prospectus with the Registrar] or, to the defendant's knowledge, before allotment thereunder.

(3) Notwithstanding anything contained in this section, where it is proved that a prospectus has been issued with intent to defraud the applicants for the securities of a company or any other person or for any fraudulent purpose, every person referred to in sub-section (1) shall be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

Section 36. Punishment for Fraudulently Inducing Persons to Invest Money

Any person who, either knowingly or recklessly makes any statement, promise or forecast which is false, deceptive or

misleading, or deliberately conceals any material facts, to induce another person to enter into, or to offer to enter into,—

(a) any agreement for, or with a view to, acquiring, disposing of, subscribing for, or underwriting securities; or

(b) any agreement, the purpose or the pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities; or

(c) any agreement for, or with a view to, obtaining credit facilities from any bank or financial institution,

shall be liable for action under section 447.

Section 37. Action by Affected Persons.

A suit may be filed or any other action may be taken under section 34 or section 35 or section 36 by any person, group of persons or any association of persons affected by any misleading statement or the inclusion or omission of any matter in the prospectus.

Section 38. Punishment for Personation for Acquisition, etc., of Securities.

(1) Any person who—

(a) makes or abets making of an application in a fictitious name to a company for acquiring, or subscribing for, its securities; or

(b) makes or abets making of multiple applications to a company in different names or in different combinations of his name or surname for acquiring or subscribing for its securities; or

(c) otherwise induces directly or indirectly a company to allot, or register any transfer of, securities to him, or to any other person in a fictitious name,

shall be liable for action under section 447.

(2) The provisions of sub-section (1) shall be prominently reproduced in every prospectus issued by a company and in every form of application for securities.

(3) Where a person has been convicted under this section, the Court may also order disgorgement of gain, if any, made by, and seizure and disposal of the securities in possession of, such person.

(4) The amount received through disgorgement or disposal of securities under sub-section (3) shall be credited to the Investor Education and Protection Fund.

Section 39. Allotment of Securities by Company

(1) No allotment of any securities of a company offered to the public for subscription shall be made unless the amount stated in the prospectus as the minimum amount has been subscribed and the sums payable on application for the amount so stated have been paid to and received by the company by cheque or other instrument.

(2) The amount payable on application on every security shall not be less than five per cent of the nominal amount of the security or such other percentage or amount, as may be specified by the Securities and Exchange Board by making regulations in this behalf.

(3) If the stated minimum amount has not been subscribed and the sum payable on application is not received within a period of thirty days from the date of issue of the prospectus, or such other

period as may be specified by the Securities and Exchange Board, the amount received under sub-section (1) shall be returned within such time and manner as may be prescribed.

***(4)** Whenever a company having a share capital makes any allotment of securities, it shall file with the Registrar a return of allotment in such manner as may be prescribed.

(5) In case of any default under sub-section (3) or sub-section (4), the company and its officer who is in default shall be liable to a penalty, for each default, of one thousand rupees for each day during which such default continues or one lakh rupees, whichever is less.

Section 40. Securities to be Dealt with in Stock Exchanges

(1) Every company making public offer shall, before making such offer, make an application to one or more recognised stock exchange or exchanges and obtain permission for the securities to be dealt with in such stock exchange or exchanges.

(2) Where a prospectus states that an application under sub-section (1) has been made, such prospectus shall also state the name or names of the stock exchange in which the securities shall be dealt with.

(3) All monies received on application from the public for subscription to the securities shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than—

(a) for adjustment against allotment of securities where the securities have been permitted to be dealt with in the stock exchange or stock exchanges specified in the prospectus; or

(b) for the repayment of monies within the time specified by the Securities and Exchange Board, received from applicants in

pursuance of the prospectus, where the company is for any other reason unable to allot securities.

(4) Any condition purporting to require or bind any applicant for securities to waive compliance with any of the requirements of this section shall be void.

(5) If a default is made in complying with the provisions of this section, the company shall be punishable with a fine which shall not be less than five lakh rupees but which may extend to fifty lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees.

(6) A company may pay commission to any person in connection with the subscription to its securities subject to such conditions as may be prescribed.

Section 41. Global Depository Receipt

A company may, after passing a special resolution in its general meeting, issue depository receipts in any foreign country in such manner, and subject to such conditions, as may be prescribed.

Section 42. Offer or Invitation for Subscription of Securities on Private Placement.

(1) A company may, subject to the provisions of this section, make a private placement of securities.

(2) A private placement shall be made only to a select group of persons who have been identified by the Board (herein referred to as “identified persons”), whose number shall not exceed fifty or such higher number as may be prescribed [excluding the qualified institutional buyers and employees of the company being offered securities under a scheme of employees stock option in terms of

provisions of clause (b) of sub-section (1) of section 62], in a financial year subject to such conditions as may be prescribed.

(3) A company making private placement shall issue private placement offer and application in such form and manner as may be prescribed to identified persons, whose names and addresses are recorded by the company in such manner as may be prescribed:

Provided that the private placement offer and application shall not carry any right of renunciation.

Explanation I.-“private placement” means any offer or invitation to subscribe or issue of securities to a select group of persons by a company (other than by way of public offer) through private placement offer-cum-application, which satisfies the conditions specified in this section.

Explanation II.-“qualified institutional buyer” means the qualified institutional buyer as defined in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, as amended from time to time, made under the Securities and Exchange Board of India Act, 1992.

Explanation III.-If a company, listed or unlisted, makes an offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to more than the prescribed number of persons, whether the payment for the securities has been received or not or whether the company intends to list its securities or not on any recognised stock exchange in or outside India, the same shall be deemed to be an offer to the public and shall accordingly be governed by the provisions of Part I of this Chapter.

(4) Every identified person willing to subscribe to the private placement issue shall apply in the private placement and

application issued to such person alongwith subscription money paid either by cheque or demand draft or other banking channel and not by cash:

Provided that a company shall not utilise monies raised through private placement unless allotment is made and the return of allotment is filed with the Registrar in accordance with sub-section (8).

(5) No fresh offer or invitation under this section shall be made unless the allotments with respect to any offer or invitation made earlier have been completed or that offer or invitation has been withdrawn or abandoned by the company:

Provided that, subject to the maximum number of identified persons under sub-section (2), a company may, at any time, make more than one issue of securities to such class of identified persons as may be prescribed.

(6) A company making an offer or invitation under this section shall allot its securities within sixty days from the date of receipt of the application money for such securities and if the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within fifteen days from the expiry of sixty days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of twelve per cent. per annum from the expiry of the sixtieth day:

Provided that monies received on application under this section shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than-

(a) for adjustment against allotment of securities; or

(b) for the repayment of monies where the company is unable to allot securities.

(7) No company issuing securities under this section shall release any public advertisements or utilise any media, marketing or distribution channels or agents to inform the public at large about such an issue.

(8) A company making any allotment of securities under this section, shall file with the Registrar a return of allotment within fifteen days from the date of the allotment in such manner as may be prescribed, including a complete list of all allottees, with their full names, addresses, number of securities allotted and such other relevant information as may be prescribed

(9) If a company defaults in filing the return of allotment within the period prescribed under sub-section (8), the company, its promoters and Directors shall be liable to a penalty for each default of one thousand rupees for each day during which such default continues but not exceeding twenty-five lakh rupees.

(10) Subject to sub-section (11), if a company makes an offer or accepts monies in contravention of this section, the company, its promoters and Directors shall be liable for a penalty which may extend to the amount raised through the private placement or two crore rupees, whichever is lower, and the company shall also refund all monies with interest as specified in sub-section (6) to subscribers within a period of thirty days of the order imposing the penalty.

(11) Notwithstanding anything contained in sub-section (9) and sub-section (10), any private placement issue not made in compliance of the provisions of sub-section (2) shall be deemed to be a public offer and all the provisions of this Act and the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 shall be applicable].

Section 62. Further Issue of Share Capital

(1) Where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered—

(a) to persons who, at the date of the offer, are holders of equity shares of the company in proportion, as nearly as circumstances admit, to the paid-up share capital on those shares by sending a letter of offer subject to the following conditions, namely:—

(i) the offer shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days or such lesser number of days as may be prescribed and not exceeding thirty days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined;

(ii) unless the articles of the company otherwise provide, the offer aforesaid shall be deemed to include a right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person; and the notice referred to in clause (i) shall contain a statement of this right;

(iii) after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of Directors may dispose of them in such manner which is not dis-advantageous to the shareholders and the company;

(b) to employees under a scheme of employees' stock option, subject to special resolution passed by company and subject to such conditions as may be prescribed; or

(c) to any persons, if it is authorised by a special resolution, whether or not those persons include the persons referred to in clause (a) or clause (b), either for cash or for a consideration other than cash, if the price of such shares is determined by the

valuation report of a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed

(2) The notice referred to in sub-clause (i) of clause (a) of sub-section (1) shall be dispatched through registered post or speed post or through electronic mode or courier or any other mode having proof of delivery to all the existing shareholders at least three days before the opening of the issue.

(3) Nothing in this section shall apply to the increase of the subscribed capital of a company caused by the exercise of an option as a term attached to the debentures issued or loan raised by the company to convert such debentures or loans into shares in the company:

Provided that the terms of issue of such debentures or loan containing such an option have been approved before the issue of such debentures or the raising of loan by a special resolution passed by the company in general meeting.

(4) Notwithstanding anything contained in sub-section (3), where any debentures have been issued, or loan has been obtained from any Government by a company, and if that Government considers it necessary in the public interest so to do, it may, by order, direct that such debentures or loans or any part thereof shall be converted into shares in the company on such terms and conditions as appear to the Government to be reasonable in the circumstances of the case even if terms of the issue of such debentures or the raising of such loans do not include a term for providing for an option for such conversion:

Provided that where the terms and conditions of such conversion are not acceptable to the company, it may, within sixty days from the date of communication of such order, appeal to the Tribunal

which shall after hearing the company and the Government pass such order as it deems fit.

(5) In determining the terms and conditions of conversion under sub-section (4), the Government shall have due regard to the financial position of the company, the terms of issue of debentures or loans, as the case may be, the rate of interest payable on such debentures or loans and such other matters as it may consider necessary.

(6) Where the Government has, by an order made under sub-section (4), directed that any debenture or loan or any part thereof shall be converted into shares in a company and where no appeal has been preferred to the Tribunal under sub-section (4) or where such appeal has been dismissed, the memorandum of such company shall, where such order has the effect of increasing the authorised share capital of the company, stand altered and the authorised share capital of such company shall stand increased by an amount equal to the amount of the value of shares which such debentures or loans or part thereof has been converted into.

Section 188. Related party transactions

(2) Every contract or arrangement entered into under sub-section (1) shall be referred to in the Board's report to the shareholders along with the justification for entering into such contract or arrangement.

Section 247. Valuation by registered valuers.—

(1) Where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets (herein referred to as the assets) or net worth of a company or its liabilities under the provision of this Act, it shall be valued by a person having such qualifications and experience and registered as a valuer in such manner, on such terms and

conditions as may be prescribed and appointed by the audit committee or in its absence by the Board of Directors of that company.

(2) The valuer appointed under sub-section (1) shall,—

(a) make an impartial, true and fair valuation of any assets which may be required to be valued;

(b) exercise due diligence while performing the functions as valuer;

(c) make the valuation in accordance with such rules as may be prescribed; and

(d) not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time during a period of three years prior to his appointment as valuer or three years after the valuation of assets was conducted by him.

(3) If a valuer contravenes the provisions of this section or the rules made thereunder, the valuer shall be liable to a penalty of fifty thousand rupees.

Provided that if the valuer has contravened such provisions with the intention to defraud the company or its members, he shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

(4) Where a valuer has been convicted under sub-section (3), he shall be liable to—

(i) refund the remuneration received by him to the company; and

(ii) pay for damages to the company or to any other person for loss arising out of incorrect or misleading statements of particulars made in his report.

Section 387. Dating of prospects and particulars to be contained therein.

(1) No person shall issue, circulate or distribute in India any prospectus offering to subscribe for securities of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless the prospectus is dated and signed, and—

(a) contains particulars with respect to the following matters, namely:—

(i) the instrument constituting or defining the constitution of the company;

(ii) the enactments or provisions by or under which the incorporation of the company was effected;

(iii) address in India where the said instrument, enactments or provisions, or copies thereof, and if the same are not in the English language, a certified translation thereof in the English language can be inspected;

(iv) the date on which and the country in which the company would be or was incorporated; and

(v) whether the company has established a place of business in India and, if so, the address of its principal office in India; and

(b) states the matters specified under section 26:

Provided that sub-clauses (i), (ii) and (iii) of clause (a) of this sub-section shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business.

(2) Any condition requiring or binding an applicant for securities to waive compliance with any requirement imposed by virtue of sub-section (1) or purporting to impute him with notice of any contract, documents or matter not specifically referred to in the prospectus, shall be void.

(3) No person shall issue to any person in India a form of application for securities of such a company or intended company as is mentioned in sub-section (1), unless the form is issued with a prospectus which complies with the provisions of this Chapter and such issue does not contravene the provisions of section 388:

Provided that this sub-section shall not apply if it is shown that the form of application was issued in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to securities.

(4) This section —

(a) shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to securities of the company, whether an applicant for securities will or will not have the right to renounce in favour of other persons; and

(b) except in so far as it requires a prospectus to be dated, to the issue of a prospectus relating to securities which are or are to be in all respects uniform with securities previously issued and for the time being dealt in or quoted on a recognised stock exchange, but, subject as aforesaid, this section shall apply to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently.

(5) Nothing in this section shall limit or diminish any liability which any person may incur under any law for the time being in force in India or under this Act apart from this section.

Section 388. Provisions as to expert's consent and allotment.

(1) No person shall issue, circulate or distribute in India any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, whether the company has or has not been established, or when formed will or will not establish, a place of business in India,—

(a) if, where the prospectus includes a statement purporting to be made by an expert, he has not given, or has before delivery of the prospectus for registration withdrawn, his written consent to the issue of the prospectus with the statement included in the form and context in which it is included, or there does not appear in the prospectus a statement that he has given and has not withdrawn his consent as aforesaid; or

(b) if the prospectus does not have the effect, where an application is made in pursuance thereof, of rendering all persons concerned bound by all the provisions of sections 33 and 40, so far as applicable.

(2) For the purposes of this section, a statement shall be deemed to be included in a prospectus, if it is contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

Section 389. Registration of prospectus.

No person shall issue, circulate or distribute in India any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless before the issue,

circulation or distribution of the prospectus in India, a copy thereof certified by the chairperson of the company and two other Directors of the company as having been approved by resolution of the managing body has been delivered for registration to the Registrar and the prospectus states on the face of it that a copy has been so delivered, and there is endorsed on or attached to the copy, any consent to the issue of the prospectus required by section 388 and such documents as may be prescribed.

Section 390. Offer of Indian Depository Receipts.

Notwithstanding anything contained in any other law for the time being in force, the Central Government may make rules applicable for—

- (a) the offer of Indian Depository Receipts;
- (b) the requirement of disclosures in prospectus or letter of offer issued in connection with Indian Depository Receipts;
- (c) the manner in which the Indian Depository Receipts shall be dealt with in a depository mode and by custodian and underwriters; and
- (d) the manner of sale, transfer or transmission of Indian Depository Receipts,

by a company incorporated or to be incorporated outside India, whether the company has or has not established, or will or will not establish, any place of business in India.

Section 391. Application of Sections 34 to 36 and Chapter XX

- (1) The provisions of sections 34 to 36 (both inclusive) shall apply to—

(i) the issue of a prospectus by a company incorporated outside India under section 389 as they apply to prospectus issued by an Indian company;

(ii) the issue of Indian Depository Receipts by a foreign company.

(2) Subject to the provisions of section 376, the provisions of Chapter XX shall apply mutatis mutandis for closure of the place of business of a foreign company in India as if it were a company incorporated in India in case such foreign company has raised monies through offer or issue of securities under this Chapter which have not been repaid or redeemed.

Section 392. Punishment for Contravention

Without prejudice to the provisions of section 391, if a foreign company contravenes the provisions of this Chapter, the foreign company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees and in the case of a continuing offence, with an additional fine which may extend to fifty thousand rupees for every day after the first during which the contravention continues and every officer of the foreign company who is in default shall be punishable with fine which shall not be less than twenty five thousand rupees but which may extend to five lakh rupees.

Section 393. Company's failure to comply with provisions of this Chapter not to affect validity of contracts, etc.

Any failure by a company to comply with the provisions of this Chapter shall not affect the validity of any contract, dealing or transaction entered into by the company or its liability to be sued in respect thereof, but the company shall not be entitled to bring any suit, claim any set-off, make any counter-claim or institute any legal proceeding in respect of any such contract, dealing or

transaction, until the company has complied with the provisions of this Act applicable to it.

Section 393A. Exemptions under this Chapter

The Central Government may, by notification, exempt any class of-

(a) foreign companies;

(b) companies incorporated or to be incorporated outside India, whether the company has or has not established, or when formed may or may not establish, a place of business in India,

as may be specified in the notification, from any of the provisions of this Chapter and a copy of every such notification shall, as soon as may be after it is made, be laid before both Houses of Parliament.

Section 447. Punishment for fraud.

Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud involving an amount of at least ten lakh rupees or one per cent. Of the turnover of the company, whichever is lower shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud:

Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

Provided further that where the fraud involves an amount less than ten lakh rupees or one per cent. Of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to fifty lakh rupees or with both.

Explanation.—For the purposes of this section—

- (i) “fraud” in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;
- (ii) “wrongful gain” means the gain by unlawful means of property to which the person gaining is not legally entitled;
- (iii) “wrongful loss” means the loss by unlawful means of property to which the person losing is legally entitled.

Appendix-III

BRIEF NOTES ON THE GENERALLY ACCEPTED ACCOUNTING PRINCIPLES (GAAP), INDIAN ACCOUNTING STANDARDS (IND AS), AND ACCOUNTING STANDARDS

Generally Accepted Accounting Principles (GAAP)

Generally Accepted Accounting Principles (GAAP) are basic accounting principles and guidelines which provide the framework for more detailed and comprehensive accounting rules, standards and other industry-specific accounting practices.

The following are the general accounting principles:

Sno.	Particulars
1	Business Entity Assumption
2	Money measurement
3	Going concern Assumption
4	Accounting Period
5	Historical Cost Concept
6	Accrual Basis of Accounting
7	Dual aspect (or Duality)
8	Revenue recognition (Realization)
9	Matching Concept
10	Full Disclosure Principle
11	Consistency
12	Conservatism (Prudence)
13	Materiality
14	Objectivity

Indian Accounting Standards (Ind AS)

The Indian Accounting Standards (Ind AS), as notified under section 133 of the Companies Act 2013, have been formulated

keeping the Indian economic & legal environment in view and with a view to converge with IFRS Standards, as issued by and copyright of which is held by the IFRS Foundation. List of these Accounting Standards are given below for reference:

Sno.	Ind As No.	Name of Ind AS
1	Ind AS 101	First-time adoption of Ind AS
2	Ind AS 102	Share Based payments
3	Ind AS 103	Business Combination
4	Ind AS 104	Insurance Contracts
5	Ind AS 105	Non-Current Assets Held for Sale and Discontinued Operations
6	Ind AS 106	Exploration for and Evaluation of Mineral Resources
7	Ind AS 107	Financial Instruments: Disclosures
8	Ind AS 108	Operating Segments
9	Ind AS 109	Financial Instruments
10	Ind AS 110	Consolidated Financial Statements
11	Ind AS 111	Joint Arrangements
12	Ind AS 112	Disclosure of Interests in Other Entities
13	Ind AS 113	Fair Value Measurement
14	Ind AS 114	Regulatory Deferral Accounts
15	Ind AS 115	Revenue from Contracts with Customers
16	Ind AS 116	Leases
17	Ind AS 1	Presentation of Financial Statements
18	Ind AS 2	Inventories Accounting
19	Ind AS 7	Statement of Cash Flows
20	Ind AS 8	Accounting Policies, Changes in Accounting Estimates and Errors
21	Ind AS 10	Events after Reporting Period
22	Ind AS 12	Income Taxes
23	Ind AS 16	Property, Plant and Equipment
24	Ind AS 19	Employee Benefits

Sno.	Ind As No.	Name of Ind AS
25	Ind AS 20	Accounting for Government Grants and Disclosure of Government Assistance
26	Ind AS 21	The Effects of Changes in Foreign Exchange Rates
27	Ind AS 23	Borrowing Costs
28	Ind AS 24	Related Party Disclosures
29	Ind AS 27	Separate Financial Statements
30	Ind AS 28	Investments in Associates and Joint Ventures
31	Ind AS 29	Financial Reporting in Hyperinflationary Economies
32	Ind AS 32	Financial Instruments: Presentation
33	Ind AS 33	Earnings per Share
34	Ind AS 34	Interim Financial Reporting
35	Ind AS 36	Impairment of Assets
36	Ind AS 37	Provisions, Contingent Liabilities and Contingent Assets
37	Ind AS 38	Intangible Assets
38	Ind AS 40	Investment Property
39	Ind AS 41	Agriculture

Accounting Standards

The Central Government vide Notification dated 23rd June 2021 specified Accounting Standards 1 to 5, 7 and 9 to 29 as recommended by the Institute of Chartered Accountants of India. The Accounting Standards shall come into effect in respect of accounting periods commencing on or after the 1st day of April, 2021 as per the Annexure attached with the above notification. List of these Accounting Standards are given below for reference:

Sno.	AS No.	Name Accounting Standard
1	AS 1	Disclosure of Accounting Principles
2	AS 2	Valuation of Inventories (revised 2016)
3	AS 3	Cash Flow Statements

Sno.	AS No.	Name Accounting Standard
4	AS 4	Contingencies and Events Occurring After the Balance Sheet Date (revised 2016)
5	AS 5	Net Profit or Loss for the Period, Prior Period Items and Changes in Accounting Policies
6	AS 7	Construction Contracts (revised 2002)
7	AS 9	Revenue Recognition
8	AS 10	Property, Plant and Equipment
9	AS 11	The Effects of Changes in Foreign Exchange Rates (revised 2003)
10	AS 12	Accounting for Government Grants
11	AS 13	Accounting for Investments (revised 2016)
12	AS 14	Accounting for Amalgamations (revised 2016)
13	AS 15	Employee Benefits (revised 2005)
14	AS 16	Borrowing Costs
15	AS 17	Segment Reporting
16	AS 18	Related Party Disclosures
17	AS 19	Accounting for Leases
18	AS 20	Earnings Per Share
19	AS 21	Consolidated Financial Statements (revised 2016)
20	AS 22	Accounting for taxes on income
21	AS 23	Accounting for Investments in Associates in Consolidated Financial Statements
22	AS 24	Discontinuing Operations
23	AS 25	Interim Financial Reporting
24	AS 26	Intangible Assets
25	AS 27	Financial Reporting of Interests in Joint Ventures
26	AS 28	Impairment of Assets
27	AS 29	Provisions, Contingent Liabilities and Contingent Assets (revised)