MERCHANT BANKING: REGULATORY ISSUES

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MERCHANT BANKING: REGULATORY ISSUES

INTRODUCTION:

The term 'Merchant Banking' originated in the late 18th and early 19th centuries in the United Kingdom when trade between countries was financed by bills of exchange drawn on the principal merchant houses. With the increase in international trade, the established merchants started the practice of lending their names to the new comers and accepting the bills of exchange on their behalf. They would charge a commission for the purpose and thus acceptance business became the hallmark of Merchant Bankers. Once these bankers had gained the confidence of the government, they were also entrusted with the job of issuing bonds in the London market.  

Although Merchant Banking activity ushered in two decades ago, it was only in 1992, in India, after the formation of SEBI that it is defined and a set of rules and regulations governing it are in place. In fact, the origin of Merchant Banking is to be traced to Italy in late medieval times and France during the seventeenth and eighteenth centuries. The Italian Merchant Bankers introduced into England not only the bills of exchange but also all the institutions and techniques connected with an organized money market. In France, during seventeenth and eighteenth centuries a Merchant Banker (Le Merchand Banauer) was not merely a trader but an entrepreneur par excellence. The Merchant Banker invested accumulated profits in all kinds of promising activities. Since they added banking business into the profession of Merchant activities and became a Merchant Banker. A distinction was existed in banking systems between moneychanger and exchanger. Moneychangers concentrated on the manual exchange of different currencies, operated locally and later accepted deposits for security reasons. Passage of time moneychangers evolved into public or deposit banks whereas exchangers, who operated internationally, engaged in bill-broking that
raising foreign exchange and provision of long term capital for public borrowers. The exchangers were remitters and Merchant Bankers. In the seventeenth century, a Merchant Banker was a dealer in bills of exchange who operated with correspondents' abroad and speculated on the rate of exchange. Initially, Merchant Bankers were not banks at all and a distinction was drawn between banks, Merchant Banks and other financial Institutions. Among all these Institutions it was only banks that accepted deposits from public.

A Merchant Banker is defined as any person who is engaged in the business of issue management either by making arrangements regarding selling, buying or subscribing to securities, or acting as manager, consultant, advisor or rendering corporate advisory services in relation to issue management. No person is allowed to carry out any activity as a Merchant Banker unless he or she holds a certificate granted by SEBI. As of 31 March 1997 there were 1,163 Merchant Bankers registered with SEBI.

MERCHANT BANKING SERVICES: SCOPE:

In the present dynamic environment where public money is playing a vital role in financing a large number of projects, both in the public and private sectors, Merchant Banking has a significant role in managing the show and meeting the growing demands for funds by the corporate sector. Merchant Banking includes a whole gamut of activities which meet the needs of both corporate and individual investors and which range from identification, evaluation, promotion and financing of projects (both domestic and overseas) by raising resources in the form of equity and long-term loans, to organize and participate in international consortia, to raise foreign currency loans and to offer advisory services on various matters related to finance, investment, capital management, structure, mergers, amalgamations, takeovers and acquisitions. They also play a useful role in the
project counseling and credit syndication management, issue management, portfolio management, money market operations, venture capital, leasing etc. Merchant Bankers act as a guide for the entrepreneurs who are unaware, or have little knowledge or experience, of the complexities involved in the above spheres.

In addition to the above, the scope of Merchant Banking services has extended to providing advisory services to companies to increase or divest their stakes, public sector undertaking disinvestments, international issues etc. With the OTCEI being operational now, Merchant Bankers will have a key role to play in terms of appraising the projects and offering two-way quotes for market making in case of entrepreneurs going for listing in the above exchange.

Merchant Bankers act as a critical link between the corporate who are intend to raise funds and the investors who are interested to invest in securities Industry. Besides issue management, the Merchant Bankers are also undertake the activities like underwriting connected with the public issue management business, Managing/advising on International offerings of Debt/Equity i.e., GDR, ADR, bonds and other instruments, Private placement securities, Primary or Satellite dealership of government securities, Corporate Advisory services related to securities market (e.g., Takeovers, Acquisitions, Disinvestments), Stock-Brokering, Advisory Services for projects, Syndication of rupee term loans and international Financial Advisory services.
MERCHANT BANKING INDIAN SCENARIO:

Merchant Banking activity was formally initiated into the Indian capital markets when Grindlays Bank received the license from Reserve Bank in 1967. Grindlays which started with management of capital issues, recognized the needs of emerging class of entrepreneurs for diverse financial services ranging from production planning and system design to market research. Apart from meeting specially, the needs of small-scale units it provided management constancy services to large and medium sized companies. Following Grindlays Bank, Citibank set up its Merchant Banking division in 1970. The division took up the task of assisting new entrepreneurs and existing units in the evaluation of new projects and raising funds through borrowing and issue of equity. Management consultant services were also offered. Consequent to the recommendations of Banking Commission in 1972, that Indian banks should start Merchant Banking services as part of their multiple services they could offer their clients, State Bank of India started the Merchant Banking Division in 1972. In the initial years the SBI's objective was to render corporate advice and assistance to small and medium entrepreneurs.

MERCHANT BANKING: SERVICES OFFERED:

The working of Merchant Banking agencies and subsequent units formed to offer Merchant Banking services has shown that Merchant Banks are rendered diverse services and functions, such as organizing an extending finance for investment in projects, assistance in financial management, acceptance house business, raising Euro-dollar loans and issue of foreign currency bonds, financing of local authorities, financing export of capital goods, ships, hydro-power installation, railways, financing of hire-purchase transactions, equipment leasing, mergers and takeovers, valuation of assets, investment management and promotion of investment trusts. Not all
Merchant Banks offer all these services. Different Merchant Bankers specialize in different services.


**MERCHANT BANKING: DEVELOPMENT**

The Economic reforms initiated by the Government since July 1991 in the field of industry, trade and financial sector have paved the way for rapid development of the economy. Several projects have been conceived since then and almost all the major groups in the country that have announced their intentions to set up mega projects in infrastructure sector envisaging investment of thousands of crores. With several large projects been set up and many more on the drawing board, the demand for a complete range of Merchant Banking services encompassing project advisory services, issue management and financial advisory services for corporate sector has increased considerably. This has led to a sharp growth in the Merchant Banking business in the last 2 years.
MERCHANT BANKING: INTERNATIONAL SCENARIO:

The Merchant Banking Scenario in developed countries like USA and UK are different from Indian Merchant Banking activities. The Merchant Banker is also called as Investment Bankers. A brief outline of Merchant Banking in USA and UK has shown in the following paragraphs.

Merchant Banks in the UK:

In the United Kingdom, Merchant Banks came on the scene in the late eighteenth century and early nineteenth century. Industrial revolution made England into a powerful trading nation. Rich merchant houses that made their fortunes in a colonial trade diversified into banking. Their principle activity started with the acceptance of commercial bills pertaining to domestic as well as international trade. The acceptance of the trade bills and their discounting gave rise to acceptance houses, discount houses, and issue houses. Merchant Banks initially included acceptance houses, discount houses and issue houses. A Merchant Banker was primarily a merchant rather than his customers entrusted banker but him with funds.

The term Merchant Bank is used in United Kingdom to denote banks that are not merchants, sometimes for merchants who are not bankers and sometimes for business houses that are neither merchants nor banks. The confusion has arisen because modern Merchant Banks have a wide range of activities. Merchant Banks in United Kingdom (a) finance foreign trade, (b) issue capital, (c) manage individual funds, (d) Undertake foreign security business and (e) foreign loan business. They also used to finance sovereign governments through grant of long term loans. They financed the British Government to purchase the shares of the Suez Canal, helped America purchase the State Of Louisiana from Napoleon by raising loans from money market in London; and Lazard Brothers granted loan to Government of India for Durgapur Steel Plant. Since the end of the
Second World War commercial banks in Western Europe have been offering multiple services including Merchant Banking services to their individual and corporate clients. British banks set up divisions or subsidiaries to offer their customers' Merchant Banking services.

**Investment Banking in USA**:

English and European Merchant Banks played a prominent role in the United States until indigenous Investment Bankers emerged on the scene in the 1880's. In the early nineteenth century, English and European Merchant Bankers met the requirements of finance for railroad construction and international trade. Later they opened their own offices in USA. Kidder, Peabody & Co.'s set up in 1824 and John Eliot Thayar banking firm in 1857. During 1850-60 several Merchant Banks were set up to arrange capital and enterprise to promote railways, industrial projects and trade and commerce. To finance railroad construction, capital issues were arranged by Merchant Bankers. In the late 1890's and early 1900's Investment Bankers replaced brokers and promoters who earlier played a prominent role in issue of securities. Investment Bankers apart from launching and organizing industrial units and mergers, helped transform privately held companies into public owned companies.

Investment Banking largely remained unregulated until the Blue Sky Laws were introduced in Kansas to protect investors from fraudulent promoters and security salesmen. However, their growth was facilitated by the enactment of Federal Act in 1941, emergence of US dollars as leading currency and expansion of activities of US banking system. Prominent Investment Bankers in 1920's were Kidder, Peabody, Drexel, Morgan & Co.; Brown Bros. and T.P. Morgan who bought and sold corporate bonds and stocks on commission, dealt in federal, state and municipal securities, trading and investing in securities on their own account, originating and distributing new
issues and participating in the management of corporations whose securities they had helped
distribute or in which they invested.

After the great crash of 1929 and depression, the Investment Banking business considerably
contracted and experienced heavy financial losses. The Federal government enacted several laws,
called New Deal Enactment, to reform Wall Street practices to protect the interest of the investors.
Officially called the Banking Act of 1933, the Glass-Steagall Banking Act separated Investment
Banking and commercial banking and prohibited depositories from underwriting. Securities
Exchange Act of 1934 sought to correct practices in securities trading.

The Glass-Steagall Banking Act prohibits commercial banks from acting as Investment Banks or
owning a firm dealing in securities. The Act has been challenged by banks offering money market
mutual funds and other investment services and is expected to be the subject of reform. The US
Federal Reserve Board decided in January 1997 to issue a sweeping proposal (subject to 60-day
comment period) that would loosen restrictions on banks' activities in the securities business.
Under the proposal bank holding companies and their securities industry affiliates can offer 'One
Stop Shopping' for their customers. The securities activities of banks are allowed under a special
provision in Glass-Steagall Act to be conducted by separately capitalized subsidiaries, in 1987
when Fed first began allowing the existence of such subsidiaries it subjected them to strict
provisions, including a series of barriers "firewalls" separating the activities of the bank and the
affiliate. As the part of the recent changes to those provisions the Fed has voted to allow the
securities affiliate of banks to generate as much as a quarter of their revenue from the underwriting
and dealing of securities—an increase from the previous limit of 10 per cent.
Regulation of Investment Banking in USA:

Investment Banking in USA as compared to Merchant Banking in the United Kingdom is subject to following regulations.

- The Securities Exchange Commission (SEC) exercises advisory and regulatory role on Investment Bankers.
- Investment Bankers were restricted from undertaking reorganization of public corporations under the Chandler Act. The task was assigned to distinguished trustees.
- Association of trustee with either the issue or its Investment Banker was prohibited under the Trustee Indenture Act, 1939. To protect the interest of security holders the trust indenture had to be filed with SEC.
- The investment and portfolio activities became subject to SEC supervision.

Investment trust were covered by Investment Company Act, 1940 which sought to regulate them; and investment advisors are required to be registered under the Investment Advisors Act, 1940. SEC was designated the supervisory and enforcement authority. Its powers were further strengthened in 1960 by authorizing it to inspect the records and accounts of firms engaged in the business. The increased regulation and control of domestic operations gave a fillip to large US banks to undertake Merchant Banking functions in international capital markets. The US Investment Banks have extended their operations to the international level. They are largely responsible for the development of the Euro-dollar market in the securities and globalization of capital markets. They have a prominent presence in London and other European financial centers. Investment Banks have today a strong parent, a strong balance sheet and a strong international network to play a global role.
Activities of Investment Banks:
Investment Banks make the primary markets in USA, arrange mergers and acquisitions, undertake global custody, proprietary trading and market making, niche business, fund management and advisory services to governments and firms.

INVESTMENT BANKING IN THE INDIAN CONTEXT:
There is a subtle difference between Merchant Banking and Investment Banking. Merchant Banking is purely fee-based whereas Investment Banking is both fee-based and fund-based. Investment Bankers commit their own funds. It is impossible for the Merchant Banks in India to stay aloof from international trends. With Merchant Banks/issuing houses in the UK already converting to Investment Banks, or at least performing some of their functions, India would not be far behind.

Evidence of this trend is the adoption of bought-out deals (BOD's) initial placement of equity, compulsory sponsorship on OTCEI, venture capital funds, influx of foreign Investment Banks and acquisition of stake in Indian Merchant Banks by foreign Investment Banks (Merill Lynch in DSP) ICICI can be regarded as an investment-banking outfit.

INVESTMENT BANKING FOR INDIA: ADVANTAGES:
The bane of Indian capital markets today is lack of investor confidence. This is reflected in the poor performance in both primary and secondary markets. The causes for the existing situation are many but primarily arise on account of lack of liquidity, unscrupulous issuers and Merchant Bankers and poor or unapprised issues. Investment Banking can solve this problem because investors would be dealing with reputed Investment Bankers in the primary market rather than
unknown issuers. The Investment Banks, whatever are their issue management techniques have their own capital on hold. The issues are likely to be properly appraised and priced. Sponsors on OTECI have a 2-year lock-in period. Similarly, Investment Banks would hold the issue until market conditions are appropriate for issue, thus reducing the risk exposure of investor's to gestation for issue. Moreover, the price of reissue will be a better indicator of issue's performance. Investment Banks make the primary market for IPO's thus assuring protection to the issuer also about subscription. In sum, the quality of pricing appraisal and primary market functions will improve resulting in substantial improvement in investor confidence. Since the Investment Banker lends its name to the issue it will imply an issue investors can trust. Investment Bankers may gradually replace Merchant Bankers in India. The Banking Commission in its Report in 1972 has indicated the necessity of Merchant Banking service in the view of the wide industrial base of the Indian Economy. The Commission was in favor of a separate institution (as distinct from commercial banks and term lending institutions) to render Merchant Banking services. The commission suggested that they should offer investment management and advisory services particularly to the medium and small savers. The commission also suggested that they should be able to manage provident funds, pension funds and trusts of various types.

MERCHAND BANKING: REGULATORY ISSUES:

In tune with the practices of the developed countries, SEBI notified Merchant Banker Rules and Regulations. The first of its kind is SEBI (Merchant Bankers) Regulations 1992, (Annexure -- III.1) notified on 22nd December 1992. These regulations are divided into five chapters. The first chapter - Preliminary -- deals with basic definitions of various terms used and applicable to these regulations. Chapter --II devoted for procedural formalities for registration of Merchant Bankers
which includes application for grant of certificate, application to confirm to the requirements, furnishing of information, clarification and personal representation, consideration of application, capital adequacy requirements, renewal of certificate etc. General obligations and responsibilities including code of conduct, maintenance of books of accounts and records, appointment of Lead Managers, responsibilities of Lead Manager, underwriting obligations, submission of due diligence certificate, documents to be submitted to the SEBI, payment of fees, disclosures to the Board, etc., are specified in Chapter – III. Procedures of inspection of Merchant Bankers are noted in Chapter – IV. Chapter – V deals with procedural formalities in case of default of Merchant Bankers.

SEBI prepared list of forms submitted by Merchant Bankers for registration, renewal of registration, Due Diligence certificate etc., with detailed information to be provided in the respective forms. These forms classified into three viz., Form A – Application for Grant of Certificate / Renewal of Certificate (reg 3), Form B – Certificate of Registration (reg 8) and Form C – Due Diligence Certificate (reg 23).

Subsequently, SEBI amended these rules and regulations from time to time. These amendments are mainly, based on the market experience and also need based. The notable amendments are SEBI (Merchant Bankers) amendment Regulations, 1997 and 1999. These amendments mainly deal with abolition of multiple categories of Merchant Bankers and clarification between and its role as primary or satellite dealer. Further, SEBI issues circulars to all the registered Merchant Bankers time to time for smooth and effective functioning of the Merchant Banking activities in the country. The recent circulars viz., RMP Circular No. 1 (1998-99), dated June 05 1998 and RMP Circular No.2 (1998-99), dated 11, 1998 are significant among them. These circular specify that the list of
activities the Merchant Banker may undertake and separate registrations for providing specified services earlier handled by Category II, III and IV Merchant Bankers (Seclude V & VI).

The highlights of these recent amendment regulations are specified below.

SEBI issued a circular (RMB Circular NO. 1(98-99) June 05, 1998) to all the registered Merchant Bankers to inform the latest amendments in the relevant regulations. The note states that, "Securities and Exchange Board of India (Merchant Banker) Regulation, 1992 were amended vide Notification No. S.O. 837 (E) Dated December 09, 1997 prohibiting registered Merchant Bankers from undertaking any activities other than those in securities market. The said regulations were further amended by SEBI (Merchant Bankers) Amendment Regulations, 1998 vide Notification No.S.O.74 (E) dated January 21, 1998, which gave time up to June 30th, 1998 to the existing registered Merchant Bankers for segregating the activities not in the area of the securities market (copies of both the notifications are enclosed). Subsequent to the notifications, SEBI has been receiving many queries from the registered Merchant Bankers regarding various aspects of the notifications. SEBI has therefore, for the benefit of the Merchant Banking community compiled all such queries and prepared a comprehensive clarification on the subject which is being issued as a Circular to all the registered Merchant Bankers."

Part A

Activities that Merchant Bankers can undertake: With effect from July 01, 1998, a Merchant Banker shall undertake only those activities which are relating to Securities market and which do not require registration/ granted exemption from registration as an NBFC from RBI.

In particular, a Merchant Banker may undertake the following activities:
- Managing of Public Issue of Securities.
- Underwriting connected with the aforesaid Public Issue Management Business
- Managing/advising on International Offerings of Debt/Equity i.e. GDR, ADR, bonds and other instruments
- Private Placement Securities
- Primary or Satellite dealership of Government Securities
- Corporate Advisory Services related to Securities Market e.g. takeovers, acquisitions, Disinvestment.
- Stock-broking
- Advisory services for Projects
- Syndication of rupee term loans
- International Financial Advisory Services

Registered Category I Merchant Bankers who were permitted under the SEBI (Merchant Bankers) Regulations 1992 to carry on underwriting and portfolio management activities may continue to carry on these activities till the expiry of their existing certificate of registration. Similarly Category II, III & IV Merchant Bankers may continue to carry on the activities which the certificate of registration authorized them to, till the validity of the existing registration.
Part B

Source of Funds: As regards the raising of funds by Merchant Bankers you may refer to the recent Circular of RBI, where under it has been clarified that Secured Debentures/ Bonds/ ICDS are exempted from the definition of term 'Public Deposits'. In view of this, a Merchant Banker may raise money by issue of Secured Debentures/Secured Bonds/ICDS as a source of fund.

Part C

Procedure for transfer of Registration: In view of the Amendments, a registered Merchant Banker carrying on any business other than that in the securities market will either have to discontinue such activities or transfer the Merchant Banking activities to a new entity. For exercising the later option the new entity should be required to be register with SEBI as a Merchant Banker. On receipt of application from the existing registered Merchant Banker for transfer of certificate (or otherwise for grant of registration) to the entity to which the Merchant Banking activities have been hived off, SEBI will consider the application for transfer, provided such applications is in Form A and accompanied by

- A confirmation that the key persons of transferor company have been transferred to the new entity (the acceptance of transfer by employee shall be submitted to SEBI)
- Net worth certificate (as on date of making application) and /or audited accounts (in case of transfer to existing subsidiary)
- Details of Enquiry, if any, initiated against the transferor company (registered Merchant Banker)
• An undertaking that the transferees company is not carrying on any activity other than that in the securities market.

• A personal guarantee/ declaration from two principal directors of the Transferee Company that it will be responsible for all the acts of omission and commission by the Transferor Company and will be subject to any action initiated by SEBI for such acts.

Those Merchant Bankers who were not carrying on non-securities market activities or those who are planning to discontinue the same, should submit an undertaking to SEBI that they will not carry on any other activity than that in securities market.

Part D

Payment of fees: The credit will be given for fees paid by the earlier Merchant Banking entity (transferor) to the entity to which the registration is being transferred (transferee). SEBI made it clear in its Rules, Regulations and Procedures about the eligibility norms for companies issuing securities, contents of the offer document, pricing by companies issuing securities, contents of letter of offer etc., for regulating the issue procedure effectively with the objective of protecting the investors in particular and regulating the capital market in general. The highlights of these issues are dealt in detail in the following.

SEBI has taken every possible steps to regulate Merchant Banking activities. In fact, SEBI has specified modalities for various related issues like, eligibility norms for companies issuing securities, pricing of securities, contents of offer document, contents of letter of offer, pre and post
issue obligations for Merchant Bankers, specific guidelines to float debt instruments etc., to streamline the Merchant Banking activities in the country. The significant points of these issues are noted in detail in the following lines.

A. ELIGIBILITY NORMS FOR COMPANIES ISSUING SECURITIES:

Eligibility norms for the companies issuing securities through offer documents should satisfy the following norms.

1. Filing of offer document
   - No Company shall make any issue of a public issue of securities, unless a draft prospectus has been filed with the Board, through an eligible Merchant Banker, at least 21 days prior to the filing of Prospectus with the Registrar of Companies (ROCs). Provided that if, within 21 days from the date of submission of draft Prospectus, the Board specifies changes, if any, in the draft Prospectus, (without being under any obligation to do so) issuer or the Lead Merchant Banker shall carry out such changes in the draft prospectus before filing the prospectus with ROCs.

   - No listed company shall make any issue of security through a rights issue where the aggregate value of securities, including premium, if any, exceeds Rs.50 lacs, unless the letter of offer is filed with the Board, through an eligible Merchant Banker, at least 21 days prior to the filing of the Letter of Offer with Regional Stock Exchange (RSE). Provided that
if, within 21 days from the date of filing of draft letter of offer, the Board specifies changes, if any, in the draft letter of offer, (without being under any obligation to do so), the issuer or the Lead Merchant Banker shall carry out such changes before filing the draft letter of offer with RSE.

2. Companies barred not to issue security

- No Company shall make an issue of securities if the company has been prohibited from accessing the capital market under any order or direction passed by the Board.

3. Application for listing

- No Company shall make any public issue of securities unless it has made an application for listing of those securities in the stock exchange(s).

4. Issue of securities in dematerialized form

- No company shall make public or rights issue or an offer for sale of securities, unless -
  (a) the company enters into an agreement with a depository for dematerialization of securities already issued or proposed to be issued to the public or existing shareholders; and
  (b) the company gives an option to subscribers/shareholders/investors to receive the security certificates or hold securities in dematerialized form with a depository.

5. Public Issue by Unlisted Companies
• No unlisted company shall make a public issue of any equity share or any security convertible at a later date into equity share unless the company has:

i) a track record of distributable profits in terms of section 205 of Companies Act, for at least three (3) out of immediately preceding five (5) years; and

ii) a pre-issue net worth of not less than Rupees One crore in three (3) out of preceding five (5) years, with the minimum net worth to be met during immediately preceding two (2) years.

• An unlisted company which does not satisfy the requirement specified above, can make a public issue of equity share capital or any security convertible at later date into equity share capital, provided a public financial institution or a scheduled commercial bank:

  a) has appraised the project to be financed through the proposed offer to the public; and;

  b) not less than 10% of the project cost is financed by the said appraising bank or institution by way of loan, equity, participation in the issue of security in the proposed issue or combination of any of them.

  c) the appraising bank or institution shall bring in the minimum specified contribution at least one day before the opening of the public issue.

6. Public Issue by Listed Companies
• A listed company shall be eligible to make a public issue of equity shares or any security convertible at later date into equity share. Provided that, if as a result of the proposed issue, net worth of the company becomes more than five times the net worth prior to the issue, the company shall satisfy the relevant provisions before it can make the proposed public issue.

• Public issue by listed companies which has changed its name to indicate as if it was engaged in the business / activities in information technology sector during a period of three years prior to filing of offer document with the Board, shall be eligible to make a public issue of equity share or securities convertible at a later date into equity share, if;

(a) (i) it has a track record of distributable profits in terms of Section 205 of Companies Act, for at least three (3) out of immediately preceding five (5) years from the information technology business / activities, and
(ii) it has a pre-issue net worth of not less than Rs.One Crore in three (3) out of proceeding five (5) years, with the minimum net worth to be met during immediately preceding two (2) years.

7. Credit Rating for Debt Instruments

• No public or rights issue of debt instrument (including convertible instruments) irrespective of their maturity or conversion period shall be made unless credit rating from a credit rating agency is obtained and disclosed in the offer document.
• Where credit rating is obtained from more than one credit rating agencies, all the credit rating/s, including the unaccepted credit ratings, shall be disclosed.

• For a public and rights issue of debt-securities of issue size greater than or equal to Rs.100 crores, two ratings from two different credit rating agencies shall be obtained.

• All the credit ratings obtained during the three (3) years preceding the public or rights issue of debt instrument (including convertible instruments) for any listed security of the issuer company shall be disclosed in the offer document.

8. Outstanding Warrants or Financial Instruments

• No unlisted company shall make a public issue of equity share or any security convertible at later date into equity share, if there are any outstanding financial instruments or any other right which would entitle the existing promoters or shareholders any option to receive equity share capital after the initial public offering.

B. PRICING BY COMPANIES ISSUING SECURITIES:

The companies eligible to make public issue can freely price their equity shares or any security convertible at later date into equity shares in the following cases:
1. Public / Rights Issue by Listed Companies: A listed company whose equity shares are listed on a stock exchange, may freely price its equity shares and any security convertible into equity at a later date, offered through a public or rights issue.

2. Public Issue by Unlisted Companies: An unlisted company eligible to make a public issue and desirous of getting its securities listed on a recognized stock exchange pursuant to a public issue, may freely price its equity shares or any securities convertible at a later date into equity shares.

3. Infrastructure Company: An eligible infrastructure company shall be free to price its equity shares subject to the compliance with the disclosure norms as specified by SEBI from time to time.

4. Initial Public Issue by Banks: The banks (whether public sector or private sector) may freely price their issue of equity shares or any securities convertible at a later date into equity share subject to approval by the Reserve Bank of India.

5. Differential Pricing:

- Any unlisted company or a listed company making a public issue of equity shares or securities convertible at a later date into equity shares, may issue such securities to applicants in the firm allotment category at a price different from the price at which the net offer to the public is made provided that the price at which the security is being offered to
the applicants in firm allotment category is higher than the price at which securities are offered to public.

- A listed company making a composite issue of capital may issue securities at differential prices in its public and rights issue.

- In the public issue which is a part of a composite issue differential pricing as per sub-clause 3.4.1 above is also permissible.

- Justification for the price difference shall be given in the offer document.

6. Price Band

- Issuer company can mention a price band of 20% (cap in the price band should not be more than 20% of the floor price) in the offer documents filed with the Board and actual price can be determined at a later date before filing of the offer document with ROCs.

- If the Board of Directors has been authorized to determine the offer price within a specified price band such price shall be determined by a Resolution to be passed by the Board of Directors.

- The Lead Merchant Bankers shall ensure that in case of the listed companies, a 48 hours notice of the meeting of the Board of Directors for passing resolution for determination of price is given to the regional Stock Exchange.
• The final offer document shall contain only one price and one set of financial projections, if applicable.

7. Payment of Discounts / Commissions, etc: No payment, direct or indirect in the nature of a discount, commission, allowance or otherwise shall be made either by the issuer company or the promoters in any public issue, to the persons who have received firm allotment in such public issue.

8. Freedom to determine the denomination of shares for public / rights issues and to change the standard denomination

• An eligible company shall be free to make public or rights issue of equity shares in any denomination determined by it in accordance with sub-section (4) of section 13 of the Companies Act, 1956 and in compliance with the norms as specified by SEBI in circular no. SMDRP/POLICY/CIR-16/99 dated June 14, 1999 and other norms as may be specified by SEBI from time to time.

• The companies, which have already issued shares in the denomination of Rs.10/- or Rs.100/-, may change the standard denomination of the shares by splitting or consolidating the existing shares.
C. CONTENTS OF OFFER DOCUMENT:

The Offer document shall contain the following:

- The offer document shall contain all material information, which shall be true, and adequate so as to enable the investors to make informed decision on the investments in the issue.

- The front cover page of the prospectus shall be white and no patterns or pictures shall be printed on this page.

- The cover page paper shall be of adequate thickness (preferably minimum 100 gsm. quality).

- The front outer cover page of the prospectus shall contain the following details only:
  
  i. The word "Prospectus"

  ii. The name of the Issuer Company and address of the registered office of the company along with telephone fax number and Email address.

  iii. The nature, number, price and amount of the instruments offered.

- The ‘Risks in relation to the first issue’ (wherever applicable) shall be incorporated in a box format in case of a initial public issue:

- In case of issue proposed to be listed on the Over the Counter Exchange of India and/or where market maker has been appointed, the concluding sentence of the above risk factor shall read as under:

  "No assurance can be given regarding the price at which the equity shares of the company will be traded after listing."
- The name and address of only of the Lead Merchant Banker, who files the offer document with Board along with its telephone, fax number and Email address shall appear on the front outer cover page.

- The names of the other Lead Merchant Bankers, Co-Managers, etc. may be mentioned on the back cover page.

- The name and address of the Registrar to the issue along with the telephone number and fax number.

- Issue Opening Date

- Credit Rating, if applicable

- Name/s of stock exchanges where listing of the securities is proposed.

- Index shall appear on the Front inside Cover Page.

- The other risk factors shall be printed in clear readable font (preferably of minimum point 10 size) starting on the first inner cover page to be numbered page i (and, if need be, shall continue on subsequent pages ii, iii, etc. as distinct from the page number of the offer document proper which would run as 1, 2, 3, etc.) in addition to appearing in the Part I of the Prospectus.

- The risk factors shall be classified as those, which are specific to the project and internal to the Issuer Company and those, which are external, and beyond the control of the Issuer Company. Management perception of the internal and external risk factors shall be given immediately after each of the risk factors and not as a separate heading under management perception.
- Back Inside Cover Page and Back Outside Cover Page shall be in white. Any 'notes' required to be given prominence shall appear immediately after the Risk Factors wherever they appear.

1. General Information

- Name and address of registered office of the Issuer Company.
- Letter of intent / industrial license and declaration of the Central Govt./RBI about non-responsibility for financial soundness or correctness of statements.

**Disclaimer Clause**: A prospectus shall contain the following disclaimer clause in bold capital letters: "It is to be distinctly understood that submission of offer document to SEBI should not in any way be deemed or construed that the same has been cleared or approved by SEBI. SEBI does not take any responsibility either for the financial soundness of any scheme or the project for which the issue is proposed to be made or for the correctness of the statements made or opinions expressed in the offer document. Lead Merchant Banker, ______________ has certified that the disclosures made in the offer document are generally adequate and are in conformity with SEBI (Disclosures and Investor Protection) Guidelines in force for the time being. This requirement is to facilitate investors to take an informed decision for making investment in the proposed issue.

- **Disclaimer Statement from the Issuer**: A statement to the effect that the issuer accepts no responsibility for statements made otherwise than in the prospectus or in
the advertisement or any other material issued by or at the instance of the issuer and that anyone placing reliance on any other source of information would be doing so at his own risk should be incorporated.

2. **Filing of offer document with the Board and ROC**

- Under this head, the office of the Board where the offer document has been filed shall be mentioned.
- The ROC where copy of the offer document, having attached thereto the Material Contracts and Documents referred to elsewhere in the offer document, has been filed shall also be mentioned.
- Names of regional stock exchange and other stock exchanges where application made for listing of present issue shall be mentioned.
- Provisions of sub-section (1) of section 68A of the Companies Act, relating to punishment for fictitious applications, shall be mentioned.

3. **Minimum Subscription Clause**

- **For Non-underwritten Public Issues:** "If the company does not receive the minimum subscription of 90% of the issued amount on the date of closure of the issue, or if the subscription level falls below 90% after the closure of issue on account of cheques having being returned unpaid or withdrawal of applications, the company shall forthwith refund the entire subscription amount received. If there is a delay beyond 8 days after the company becomes liable to pay the amount, the company shall pay interest as per Section 73 of the Companies Act 1956."
• **For Underwritten Public Issues:** "If the company does not receive the minimum subscription of 90% of the net offer to public including devolvement of Underwriters within 60 days from the date of closure of the issue, the company shall forthwith refund the entire subscription amount received. If there is a delay beyond 8 days after the company becomes liable to pay the amount, the company shall pay interest prescribed under Section 73 of the Companies Act 1956."

• **For Composite Issues:** The Lead Merchant Banker shall ensure that the requirement of "minimum subscription" is satisfied both jointly and severally, i.e., independently for both rights and public issues. If the company does not receive the minimum subscription in either of the issues the company shall refund the entire subscription received.

4. **Capital Structure of the company:**

- Authorized issued subscribed and paid up capital (Number of instruments, description, aggregate nominal value)

- Size of present issue giving separately promoters contribution, firm allotment / reservation for specified categories and net offer to public. (Number of instruments, description, aggregate nominal value and issue amount shall be given in that order, Name(s) of group companies to be given, in case, reservation has been made for shareholders of the group companies)

- Paid-up Capital
  i. after the issue
  ii. after conversion of securities (if-applicable)

- Share Premium Account (before and after the issue)
5. Arrangements for Disposal of Odd Lots:

- Lead Merchant Banker shall ascertain whether the companies coming for fresh issue of capital propose to set up trusts in order to provide service to the investors in the matter of disposal of odd lot shares of the company held by them and if so, disclosures relating to setting up and operation of the trust shall be contained in the offer document.

- Whenever any issue results in issue of shares in odd lots, the Issuer Company, shall as far as possible issue certificates in the denomination of 1-2-5-10-20-50 shares.

- Rights of the instrument holders

6. Applications by Mutual Funds

- Lead Merchant Bankers shall clearly incorporate necessary disclosures under the heads "Procedure for applications by mutual funds" and "Multiple Applications" to indicate that a separate application can be made in respect of each scheme of an Indian mutual fund registered with the Board and that such applications shall not be treated as multiple applications.

- The applications made by the AMCs or custodians of a Mutual Fund shall clearly indicate the name of the concerned scheme for which application is being made.

7. Applications by NRIs

The Lead Merchant Banker shall ensure the following disclosures:

- the name and address of at least one place in India from where individual NRI applicants can obtain the application forms.
"NRI applicants may please note that only such applications as are accompanied by payment in free foreign exchange shall be considered for allotment under the reserved category. The NRIs who intend to make payment through Non-Resident Ordinary (NRO) accounts shall use the form meant for Resident Indians and shall not use the forms meant for reserved category."

8. **Key Managerial Personnel:** The Lead Merchant Banker shall verify and ensure that the persons whose name appears in this para are in the employment of the company as permanent employees.

9. **Financial Performance of the Company for the Last Five Years:** (Figures to be taken from the audited annual accounts in tabular form)

   Lead Merchant Banker shall ensure that the financial information about the Issuer Company appearing in the abridged prospectus is as per Auditors' report of the prospectus.

**CONTENTS OF THE LETTER OF OFFER**

1. **General information**
   - Name and address of registered office of the company.
   - Issue listed at: [Name(s) of the Stock Exchanges]
   - Opening, closing dates of the issue.
   - Name and address of Lead Merchant Bankers.
• Name and address of Trustees under Debenture Trust Deeds (in case of debenture/issue).

• Rating for the Debenture/Preference Shares, if any, obtained from any Credit Rating Agency.

• Provisions of sub-section (1) of Section 68A of the Companies Act, 1956 relating to punishment for fictitious applications.

• Declaration about the issue of allotment letters/refunds within a period of 7 weeks and interest in case of delay in refund at the prescribed rate under Section 73(2)/(2A).

• Declaration by the Board of Directors stating that all moneys received out of issue of shares or debentures through an offer document shall be transferred to a separate bank account other than the bank account referred to in sub-section (3) of section 73;

2. Minimum Subscription Clause: The minimum subscription clause shall be incorporated as under:

For Non-underwritten Rights Issue

• If the Company does not receive the minimum subscription of 90% of the issue, the entire subscription shall be refunded to the applicants within forty-two days from the date of closure of the issue.

• If there is delay in the refund of subscription by more than 8 days after the company becomes liable to pay the subscription amount (i.e. forty two days after closure of the issue), the company will pay interest for the delayed period, at rates prescribed under sub-sections (2) and (2A) of Section 73 of the Companies Act, 1956.
For Underwritten Rights Issue

- If the Company does not receive minimum subscription of 90% of the issue including devolvement of underwriters, the entire subscription shall be refunded to the applicants within forty-two days from the date of closure of the issue.

- If there is delay in the refund of subscription by more than 8 days after the company becomes liable to pay the subscription amount (i.e. forty two days after closure of the issue), the company will pay interest for the delayed period, at prescribed rates in subsections (2) and (2A) of Section 73 of the Companies Act, 1956.

3. Capital structure of the company

   a. Issued, subscribed and paid-up capital

   b. Size of present issue

   c. Paid up capital -

      i. after the present issue.

      ii. after the conversion of debentures (if applicable)

   d. (i) Details of promoters holding (pre-issue and post issues) and the lock-in.

      ii. Pre and Post Issue shareholding pattern.

      iii. Promoters intention to subscribe to their entire rights entitlement.

4. Terms of the present issue

   - Authority for the issue, terms of payments and procedure and time schedule for allotment and issue of certificates.
- How to apply - availability of forms, letter of offer and mode of payment.
- Special tax benefits to company and shareholders under the Income tax Act, if any.

5. Particulars of the issue
- Object of the issue.
- Project Cost.
- Means of financing (including contribution of promoters).

6. Company, management and project
- History, main objects and presents business of the company.
- Background of promoters, Managing Director/ Whole time Director and names of nominees of institutions, if any, on the Board of Directors including key management personnel.
- Location of the Project.
- Plant and Machinery, technology, process etc.
- Collaboration, performance guarantee if any, or assistance in marketing by the collaborators.
- Infrastructure facilities for raw materials and utilities like water, electricity, etc.
- Schedule of implementation of the project and progress made so far, giving details of land acquisition, execution of civil works, installation of plant and machinery, trial production, date of commercial production, if any.
- the products -
i. Nature of product(s)- consumer / industrial and end users.

ii. Existing licensed and installed capacity of the product, demand of the product - existing, and estimated in the coming years as estimated by a Government authority or by any other reliable institution, giving source of the information.

iii. Approach to marketing and proposed marketing set up (in case of company providing services, relevant information in regard to nature / extent of services etc. to be furnished).

- Future prospects - The expected year when the company would be able to earn net profit, declare dividend.

- Change, if any, in directors and auditors during the last three years and reasons thereof.

7. Financial performance of the company for the last five years:

(Figures to be taken from the audited annual accounts in tabular form)

- Balance Sheet Data: Equity Capital, Reserves (State Revaluation Reserve, the year of revaluation and its monetary effect on assets) and borrowings.

- Profit and Loss data: Sales, Gross profit, Net profit, Dividend paid if any.

- Any change in accounting policies during the last three years and their effect on the profits and the reserves of the company.

- Stock market quotation of shares / debentures of the company, if any, (high/low price in each of the last three years and monthly high /low price during the last six months)
• Details of any pending litigation, defaults against the company, these group companies and the business relationship of these companies with the issuing company.

• Promise versus performance for the earlier Public / Rights issues of the Company, or group companies.

• Financial performance of the subsidiary company / group company.

• Justification of premium.

8. Risk Factors and Management perception of risk factors.

• The information for the period between the last date of the balance sheet and profit and loss account sent to the shareholders and up to the end of the last but one month preceding the date of the letter of offer shall be furnished.

• Working results of the company under following heads

(a) (i) Sales / turnover

(ii) Other income

(b) Estimated gross profit/loss

(excluding depreciation and taxes)

(c) (i) Provision for depreciation

(ii) Provision for taxes

(d) Estimated net profit/loss

• Material changes and commitments, if any, affecting financial position of the company.
• Weekend prices for the last four weeks; current market price; and highest and lowest prices of equity shares during the period with the relative dates.

9. Following particulars in regard to the listed companies under the same management within the meaning of section 370(1B), which made any capital issue in the last three years.
   a. Name of the company.
   b. Year of issue.
   c. Type of issue (rights)
   d. Amount of issue.
   e. Date of closure of issue.
   f. Date of dispatch of share/debenture certificate completed.
   g. Date of completion of the project, where object of the issue was financing of a project.
   h. Rate of Dividend paid.

10. Management discussion and analysis of the financial conditions and results of the operations as reflected in the financial statement.
   • Any material development after the date of the latest balance sheet and its impact on performance and prospects of the company.
   • Outstanding litigation
   • Expert opinion obtained if any.

11. Statutory and other information
   • Option to Subscribe
(a) the details of option to subscribe for securities to be dealt in a depository.
(b) The Lead Merchant Banker shall incorporate a statement in the offer document and in the application form to the effect that the investor shall have an option either to receive the security certificates or to hold the securities in dematerialized form with a depository.
- Material contracts and time and place of inspection.

12. Undertaking by Directors

"No statement made in this Form shall contravene any of the provisions of the Companies Act, 1956 and the rules made thereunder. All the legal requirements connected with the said issue as also the guidelines, instructions etc. issued by SEBI, Government and any other competent authority in this behalf have been duly complied with".
MERCHAND BANKERS: RULES, REGULATIONS, GUIDELINES AND OBLIGATIONS

The responsibilities of the Merchant Banker to the issue includes fulfilling pre-issue and post-issue obligations, understanding and implementing guidelines for issue of various financial products including book building and advertisement guidelines. The detailed guidelines for each aspect clearly prepared by SEBI. The highlights of these are, briefly, noted to understand the role of Merchant Bankers in this respect.

A. PRE-ISSUE OBLIGATIONS:

• The Lead Merchant Banker shall exercise due diligence.

• The standard of due diligence shall be such that the Merchant Banker shall satisfy himself about all the aspects of offering, veracity and adequacy of disclosure in the offer documents.

• The liability of the Merchant Banker shall continue even after the completion of issue process.

• The Lead Merchant Banker, shall pay requisite fee in accordance with regulation 24A of Securities and Exchange Board of India (Merchant Bankers) Rules and Regulations, 1992 along with draft offer document filed with the Board.

Documents to be submitted along with the Offer Document by the Lead Manager

• Memorandum of Understanding (MOU): The Lead Merchant Banker responsible for drafting of the offer documents shall ensure that a copy of the MOU entered into
with the issuer company is submitted to the Board along with the draft offer document.

- **Inter-se Allocation of Responsibilities:** In case a public or rights issue is managed by more than one Merchant Bankers the rights, obligations and responsibilities of each Merchant Banker shall be demarcated. In case of under subscription at an issue, the Lead Merchant Banker responsible for underwriting arrangements shall invoke underwriting obligations and ensure that the underwriters pay the amount of devolvement and the same shall be incorporated in the inter-se allocation of responsibilities accompanying the due diligence certificate submitted by the Lead Merchant Banker to the Board.

- **Due Diligence Certificate:** The Lead Merchant Banker shall furnish to the Board a due diligence certificate along with the draft prospectus. In addition to the due diligence certificate furnished along with the draft offer document, the Lead Merchant Banker shall also:
  
i) certify that all amendments suggestion or observations made by Board have been incorporated in the offer document;

  ii) furnish a fresh "due diligence" certificate at the time of filing the prospectus with the Registrar of Companies.

  iii) furnish a fresh certificate immediately before the opening of the issue that no corrective action on its part is needed as per the format specified.

  iv) furnish a fresh certificate after the issue has opened but before it closes for subscription as per the format specified.
• Certificates Signed by the Company Secretary or Chartered Accountant, in Case of Listed Companies Making Further Issue of Capital

• all refund orders of the previous issues were dispatched within the prescribed time and in the prescribed manner;

• all security certificates were dispatched to the allottees within the prescribed time and in the prescribed manner;

• the securities were listed on the Stock Exchanges as specified in the offer documents.

Undertaking:

• The issuer shall submit an undertaking to the Board to the effect that transactions in securities by the 'promoter' the 'promoter group' and the immediate relatives of the 'promoters during the period between the date of filing the offer documents with the Registrar of Companies or Stock Exchange as the case may be and the date of closure of the issue shall be reported to the Stock exchanges concerned within 24 hours of the transaction(s).

List of Promoters’ Group:

• The issuer shall submit to the Board a list of persons who constitute the Promoters’ Group and their individual shareholdings.

APPOINTMENT OF INTERMEDIARIES
Appointment of Merchant Bankers: Merchant Banker who is associated with the issuer company, as a promoter or a director shall not to lead manages the issue of the company. Provide that the Lead Merchant Banker holding the securities of the Issuer Company may lead manage the issue;

- if the securities of the issuer company are listed or proposed to be listed on the Over the Counter Exchange of India (OTCEI) and;
- the Market Makers have either been appointed or are proposed to be appointed as per the offer document.

Appointment of Co-managers: Lead Merchant Bankers shall ensure that the number of co-managers to an issue does not exceed the number of Lead Merchant Bankers to the said issue and there is only one advisor to the issue.

Appointment of Other Intermediaries: Lead Merchant Banker shall ensure that the other intermediaries being appointed is duly registered with the Board, wherever applicable. Before advising the issuer on the appointment of other intermediaries, the Lead Merchant Banker shall independently assess the capability and the capacity of the various intermediaries to carry out assignment. The Lead Merchant Banker shall ensure that issuer companies enters into a Memorandum of Understanding with the intermediary (ies) concerned whenever required. The Lead Merchant Banker shall ensure that Bankers to the Issue are appointed in all the mandatory collection centers as specified. The Lead Merchant Banker shall not act as a Registrar to an issue in which it is also handling the post issue responsibilities.
The Lead Merchant Bankers shall ensure that:

- the Registrars to Issue registered with the Board are appointed in all public issues and rights issues;
- in case where the Issuer Company is a registered Registrar to an Issue, the issuer shall appoint an independent outside Registrar to process its issue.

The Lead Merchant Banker shall ensure that Registrar to an issue, which is associated with the Issuer Company as a promoter or a director, shall not act as Registrar for the Issuer Company. Where the number of applications in a public issue is expected to be large, the issuer company in consultation with the Lead Merchant Banker may associate one or more Registrars registered with the Board for the limited purpose of collecting the application forms at different centers and forward the same to the designated Registrar to the Issue as mentioned the offer document. The designated Registrar to the Issue shall, be primarily and solely responsible for all the activities as assigned to them for the issue management.

**Underwriting:** The Lead Merchant Banker shall satisfy themselves about the ability of the underwriters to discharge their underwriting obligations. The Lead Merchant Banker shall:

- incorporate a statement in the offer document to the effect that in the opinion of the Lead Merchant Banker, the underwriters' assets are adequate to meet their underwriting obligations;
• obtain Underwriters' written consent before including their names as underwriters in the final offer document.

In respect of an underwritten issue, the Lead Merchant Banker shall ensure that the relevant details of underwriters are included in the offer document.

**Offer Document to be Made Public:** The draft offer document filed with the Board shall be made public for a period of 21 days from the date of filing the offer document with the Board. The Lead Merchant Banker shall:

• simultaneously file copies of the draft offer document with the stock exchanges where the securities offered through the issue are proposed to be listed.

• make copies of offer document available to the public.

Lead Merchant Banker or stock exchanges may charge an appropriate sum to the person requesting for the copy of offer document.

**Dispatch of Issue Material:** The Lead Merchant Banker shall ensure that for public issues offer documents and other issue materials are dispatched to the various stock exchanges, brokers, underwriters, bankers to the issue, investors associations, etc. in advance as agreed upon. In the case of rights issues, Lead Merchant Banker shall ensure that the letters of offer are dispatched to all shareholders at least one week before the date of opening of the issue.
No Complaints Certificate: After a period of 21 days from the date the draft offer document was made public, the Lead Merchant Banker shall file a statement with the Board: i) giving a list of complaints received by it,

ii) a statement by it whether it is proposed to amend the draft offer document or not, and;

iii) highlight those amendments.

Mandatory Collection Centers: The minimum number of collection centers for an issue of capital shall be- a) the four metropolitan centers situated at Mumbai, Delhi, Calcutta and Chennai, b) all such centers where the stock exchanges are located in the region in which the registered office of the company is situated. The Issuer Company shall be free to appoint as many collection centers, as it may deem fit in addition to the above minimum requirement.

Authorized Collection Agents: The issuer company can also appoint authorized collection agents in consultation with the Lead Merchant Banker subject to necessary disclosures including the names and addresses of such agents made in the offer document.

Advertisement for Rights Post Issues: The Lead Merchant Banker shall ensure that in case of a rights issue, an advertisement giving the date of completion of dispatch of letters of offer, shall be released in at least in an English National Daily with wide circulation, one Hindi National Paper and a Regional language daily circulated at the
place where registered office of the issuer company is situated at least 7 days before the date of opening of the issue.

**Appointment of Compliance Officer:** An issuer company shall appoint a compliance officer who shall directly liaison with the Board with regard to compliance with various laws, rules, regulations and other directives issued by the Board and investors complaints related matter.

**Abridged Prospectus:** The Lead Merchant Banker shall ensure the following:

- Every application form distributed by the Issuer Company or anyone else is accompanied by a copy of the Abridged Prospectus.

- The application form may be stapled to form part of the Abridged Prospectus. Alternatively, it may be a perforated part of the Abridged Prospectus.

- The Abridged Prospectus shall not contain matters, which are extraneous to the contents of the prospectus.

- The Abridged Prospectus shall be printed at least in point 7 size with proper spacing.

- Enough space shall be provided in the application form to enable the investors to file in various details like name, address, etc.

**Agreements with depositaries:** The Lead Manager shall ensure that the issuer company has entered into agreements with all the depositaries for dematerialization of securities. He shall also ensure that an option be given to the investors to receive allotment of securities in dematerialized form through any of the depositaries."
B. POST - ISSUE OBLIGATIONS:

The post issue obligations shall be as follows:

Post- issue Monitoring Reports: Irrespective of the level of subscription, the post-issue Lead Merchant Banker shall ensure the submission of the post-issue monitoring reports as per formats specified. These reports shall be submitted within 3 working days from the due dates.

Public Issues

• 3-Day Post Issue Monitoring Report - The due date for this report shall be the 3rd day from the date of closure of subscription of the issue.

• 78-Day Post Issue Monitoring Report - The due date for this report shall be the 78th day from the date of closure of subscription of the issue.

Rights Issues

• 3-Day Post-Issue Monitoring Report - The due date for this report shall be the 3rd day from the date of closure of subscription of the issue.

• 50-Day Post-Issue Monitoring Report - The due date for this report shall be the 50th day from the date of closure of subscription of the issue.

Redressal of Investor Grievances: The Post -issue Lead Merchant Banker shall actively associate himself with post-issue activities namely, allotment, refund and dispatch and shall regularly monitor redressal of investor grievances arising therefrom.
Co-ordination with Intermediaries: The Post-issue Lead Merchant Banker shall maintain close co-ordination with the Registrars to the Issue and arrange to depute its officers to the offices of various intermediaries at regular intervals after the closure of the issue to monitor the flow of applications from collecting bank branches, processing of the applications including those accompanied by stockinvest and other matters till the basis of allotment is finalized, dispatch security certificates and refund orders completed and securities listed. Any act of omission or commission on the part of any of the intermediaries noticed during such visits shall be duly reported to the Board.

Underwriters:

- If the issue is proposed to be closed at the earliest closing date, the Lead Merchant Banker shall satisfy himself that the issue is fully subscribed before announcing closure of the issue.

- In case, there is no definite information about subscription figures, the issue shall be kept open for the required number of days to take care of the underwriters' interests and to avoid any dispute, at a later date, by the underwriters in respect of their liability.

- In case there is a devolvement on underwriters, the Lead Merchant Banker shall ensure that the underwriters honour their commitments within 60 days from the date of closure of the issue.

- In case of undersubscribed issues, the Lead Merchant Banker shall furnish information in respect of underwriters who have failed to meet their underwriting devolvements to the Board in the format specified.
**Bankers to an issue:** The post-issue Lead Merchant Banker shall ensure that moneys received pursuant to the issue and kept in a separate bank (i.e. Bankers to an Issue), as per the provisions of section 73(3) of the Companies Act 1956, is released by the said bank only after the listing permission under the said Section has been obtained from all the stock exchanges where the securities was proposed to be listed as per the offer document.

**Post-issue Advertisements:** Post-issue Lead Merchant Banker shall ensure that in all issues, advertisement giving details relating to oversubscription, basis of allotment, number, value and percentage of applications received along with stockinvest, number, value and percentage of successful allottees who have applied through stockinvest, date of completion of dispatch of refund orders, date of dispatch of certificates and date of filing of listing application is released within 10 days from the date of completion of the various activities at least in an English National Daily with wide circulation, one Hindi National Paper and a Regional language daily circulated at the place where registered office of the issuer company is situated.

**Basis of Allotment:** In a public issue of securities, the Executive Director/Managing Director of the Regional Stock Exchange along with the post issue Lead Merchant Banker and the Registrars to the Issue shall be responsible to ensure that the basis of allotment is finalized in a fair and proper manner in accordance with the guidelines:
**Other Responsibilities:** Lead Merchant Banker shall ensure payment of interest to the applicants for delayed dispatch of allotment letters, refund orders, etc. as prescribed in the offer document. The Post-issue Lead Merchant Banker shall ensure that the dispatch of refund orders / allotment letters /share certificates is done by way of registered post / certificate of posting as may be applicable. In case of all issues, advertisement giving details relating to oversubscription, basis of allotment, number, value and percentage of applications received along with stockinvest, number, value and percentage of successful allottees who have applied through stockinvest, date of completion of dispatch of refund orders, date of dispatch of certificates and date of filing of listing application. Post-issue Lead Merchant Banker shall continue to be responsible for post issue activities till the subscribers have received the shares/debenture certificates or refund of application moneys and the listing agreement is entered into by the issuer company with the stock exchange and listing/ trading permission is obtained.

**C. OTHER ISSUE REQUIREMENTS:**

- **Public Offer by Unlisted Companies with Post Issue Capital upto Rs.5 crores:** An unlisted company, with a commercial operation of less than two years proposing to issue securities to the public, resulting in post issue capital of Rs.3 crores and not exceeding Rs.5 crores, shall be eligible to apply for listing of securities only on those stock exchange(s) where trading of securities is screen-based. The Issuer Company shall appoint market maker(s) on all the stock exchanges where the securities are proposed to be listed.
• **Listing of pure debt / convertible instruments issued by Unlisted infrastructure companies and Municipal Corporations:**

- An unlisted infrastructure company making a public issue of pure debt instruments / convertible debt instruments and a Municipal Corporation making a public issue of pure debt instruments shall be eligible to apply for listing of these instruments in the stock exchanges subject to the following:

  - the debt instruments, irrespective of the maturity, shall carry on rating from a credit rating agency not below investment grade;
  
  - the debt instruments, irrespective of the maturity, shall be fully secured by creating security in favour of the Debenture Trustees;
  
  - in the case of issue of pure debt instruments by an infrastructure company, equity issued prior to the public issue of debt can be listed only when a public offer of equity has been made; and
  
  - in the case of issue of debt instruments by infrastructure companies fully or partly convertible into equity, while the PCD/FCD shall be listed directly, the equity held prior to the public issue of the PCD/FCD shall be listed only at the time when the equity arising on conversion of the PCD/FCD are listed.

• **Rule 19(2)(b) of SC (R) Rules, 1957:** In case of a public issue by an unlisted company, the net offer to public shall be at least 25% of the post-issue capital. In case of a public issue by a listed company, the net offer to public shall be at least 25% of the issue size. In case of public issues or offers for sale of equity shares or securities convertible at a later date into equity by unlisted companies in the information technology sector at least 10% of
the securities issued by such company may be offered to the public subject to the conditions specified.

**Capital Structure:** For the purposes of presentation of the capital structure in the specified format, the Lead Merchant Banker shall take into account the following:

Proposed issue amount = (Promoters' contribution in the proposed issue) + (firm allotment) + (offer through the offer document). Offer through the offer document shall include net offer to the public and reservations to the permitted reserved categories and shall not include the promoters' contribution in the proposed issue and firm allotment. Net offer to the public shall mean the offer made to Indian public and does not include reservations/firm allotments/promoters' contribution.

**Firm Allotments and Reservations**

a) i) If any firm allotment has been made to any person(s) in the specified categories, no further application for subscription to the public issue from such person(s) [excepting application from employee's category] shall be entertained.

ii) where reservation has been made to specified category (ies), person(s) belonging to category(ies) [except employees and shareholders categories] shall not make an application in the 'net public offer' category.

b) i) An applicant in the net public category cannot make an application for that number of securities exceeding the number of securities offered to the public.
ii) In the case of reserved categories, a single applicant in the reserved category can make an application for a number of securities, which exceeds the reservation.

c) i) Any unsubscribed portion in any reserved category may be added to any other reserved category.

ii) The unsubscribe portion, if any, after such *inter se* adjustments amongst the reserved categories shall be added back to the net offer to the public.

d) In case of undersubscription in the net offer to the public portion, spillover to the extent of undersubscription shall be permitted from the reserved category to the net public offer portion.

e) If any person to whom firm allotment is proposed to be made withdraws partially or fully from the offer made to him after filing of the prospectus with the Registrar of Companies, the extent of shares proposed to be allotted to such person, shall be taken up by the promoters and the subscription amount shall be brought in at least one day prior to the issue opening date.

f) The shares so acquired by promoters under sub-clause (e) above shall also be subject to a lock-in for a period of 3 years.

g) No buy-back or stand-by or similar arrangements shall be allowed with the persons for whom securities are reserved for allotment on a firm basis.
Compliance Officer to be Appointed by Lead Merchant Banker: The Merchant Bankers shall appoint a senior officer as Compliance Officer to ensure that all Rules, Regulations, Guidelines, Notifications etc. issued by the Board, the Government of India, and other regulatory organizations are complied with.

D. GUIDELINES FOR ISSUE OF DEBT INSTRUMENTS:

A Company offering Convertible/Non Convertible debt instruments through an offer document shall comply with the following provisions.

Requirement of credit rating: No public or rights issue of debt instruments (including convertible instruments) in respect of their maturity or conversion period shall be made unless credit rating from a credit rating agency has been obtained and disclosed in the offer document.

Requirement in respect of Debenture Trustee: In case of issue of debenture with maturity of more than 18 months, the issuer shall appoint a Debenture Trustee.

Creation of Debenture Redemption Reserves (DRR): A company has to create DRR in case of issue of debenture with maturity of more than 18 months.

Distribution of Dividends:

• In case of new companies, distribution of dividend shall require approval of the trustees to the issue and the lead institution, if any.
• In the case of existing companies prior permission of the lead institution for declaring dividend exceeding 20% or as per the loan covenants is necessary if the company does not comply with institutional condition regarding interest and debt service coverage ratio.

• (i) Dividends may be distributed out of profit of particular years only after transfer of requisite amount in DRR. (ii) If residual profits after transfer to DRR are inadequate to distribute reasonable dividends, company may distribute dividend out of general reserve.

Redemption: The issuer company shall redeem the debentures as per the offer document.

Additional Disclosures in respect of debentures: The offer document shall contain: - Premium amount on conversion, time of conversion. In case of PCDs/NCDs, redemption amount, period of maturity, yield on redemption of the PCDs/NCDs. Full information relating to the terms of offer or purchase including the name(s) of the party offering to purchase the khokhas (non-convertible portion of PCDs). The discount at which such offer is made and the effective price for the investor as a result of such discount. The existing and future equity and long term debt ratio. Servicing behaviour on existing debentures, payment of due interest on due dates on term loans and debentures. That the certificate from a financial institution or bankers about their no objection for a second or pari-passu charge being created in favour of the trustees to the proposed debenture issues has been obtained.
E. GUIDELINES FOR ADVERTISEMENT:
The Lead Merchant Banker should ensure compliance with the guidelines on advertisement by the Issuer Company.

F. GUIDELINES FOR BOOK BUILDING:
The procedural formalities to be followed by the Merchant Banker for handling book building process as noted below.

- The Issuer Company shall nominate one of the Lead Merchant Bankers to the issue as a Book Runner and his name shall be mentioned in the prospectus.
- The Lead Merchant Banker shall act as the Lead Book Runner and the other eligible Merchant Banker(s), so appointed by the Issuer, shall be termed as Co-Book Runner(s).
- The primary responsibility of building the book shall be that of the Lead Book Runner.
- The Book Runner(s) may appoint those intermediaries who are registered with the Board and who are permitted to carry on activity as an 'Underwriter' as syndicate members.
- In case of appointment of more than one Lead Merchant Banker or Book Runner for book building, the rights, obligations and responsibilities of each should be delineated.
- In case of an under subscription in an issue, the shortfall shall have to be made good by the Book Runner(s) to the issue and the same shall be incorporated in the interse allocation of responsibility given in Schedule II.
- The Board within 21 days of the receipt of the draft prospectus may suggest modifications to it.
• The Lead Merchant Banker shall be responsible for ensuring that the modifications / final observations made by the Board are incorporated in the prospectus.

Underwriting

(i) The entire offer other than to the categories referred to in clause 11.3 (iii) above shall be fully underwritten by the ‘syndicate members’/Book Runner(s).

(ii) (a) The ‘syndicate members’ shall enter into an underwriting agreement with the Book Runner(s) indicating the number of securities, which they would subscribe at the predetermined price.

(b) The Book Runner(s) shall in turn enter into an underwriting agreement with the Issuer Company.

(iii) In the event of the syndicate members not fulfilling their underwriting obligations the Book Runner(s) shall be responsible for bringing in the amount devolved.

(iv) There shall not be any undersubscription in the category reserved for persons applying up to 10 tradable lots as the Underwriters shall bring in the amount devolved subject to the fulfillment of the minimum shareholders criterion.

Maintenance of Books and Records

(i) A final book of demand showing the result of the allocation process shall be maintained by the book runner/s. (ii) The Book Runner/s and other intermediaries in the book building process associated shall maintain records of the book building prices. (iii) The Board shall have the right to inspect the records, books and documents relating to the Book building process and such person shall extend full co-operation.
MERCHANT BANKERS: OPERATIONAL GUIDELINES

The Merchant Banker shall ensure compliance with the various issues related to submission of draft and final offer document, underwriting obligations, redressal of investor grievances, submission of post-issue monitoring reports, registration and renewal of registration of Merchant Bankers, reporting requirements in respect of Merchant Banking activities etc. The highlights these issues are noted below.

A. SUBMISSION OF DRAFT AND FINAL OFFER DOCUMENT:

• The offer documents of size up to Rs. 20 crores shall be filed by Lead Merchant Bankers with the concerned regional office of Board under the jurisdiction of which the registered office of the issuer company falls.

• The jurisdiction of regional offices/ head office shall be as per Schedule XXII.

• As per the Guidelines, the draft offer document filed with the Board shall be made public.

• The Lead Merchant Banker shall make 10 copies of the draft offer document available to Board and 25 copies to the Stock Exchange(s) where the issue is proposed to be listed.

• Copies of the draft offer document shall be made available to the public by the Lead Merchant Bankers / Stock Exchange.

• The Lead Merchant Banker and the Stock Exchanges(s) may charge such reasonable charge for providing a copy of the draft offer document.
• The Lead Merchant Banker shall also submit to Board the draft offer document on a computer floppy as per the format specified.

• The Lead Merchant Bankers shall submit two copies of final printed copy of the final offer document to dealing offices of Board "within three (3) days of filing offer document with Registrar of Companies / concerned Stock Exchange(s) as the case may be".

• The Lead Merchant Banker shall submit one final printed copy of the final offer document to Primary Market Department, SEBI, Head Office, within three (3) days of filing the offer document with Registrar of Companies / concerned Stock Exchange(s) as the case may be."

• The Lead Merchant Banker shall submit a computer floppy containing the final prospectus/ letter of offer to Primary Market Department, SEBI, Head Office, as specified, within three (3) days of filing the final prospectus/ letter of offer with the Registrar of Companies/ concerned Stock Exchange(s). Along with the floppy, the Lead Manager shall submit an undertaking to SEBI certifying that the contents of the floppy are is in HTML format and are identical to the printed version of prospectus/ letter of offer filed with Registrar of Companies/ concerned Stock Exchange as the case may be.

• Whenever offer documents (for public/ rights issues, takeovers or for any other purpose) are filed with any Department/ office of Board, the following details "certified as correct" shall be given by the Lead Merchant Banker in the forwarding letters:
  • Registration No.
• Date of Registration / Renewal of registration.
• Date of expiry of registration.
• If applied for renewal, date of application.
• Any communication from the Board prohibiting from acting as a Merchant Banker.
• Any inquiry / investigation being conducted by the Board.
• Period up to which registration / renewal fees has been paid.
• "Whether any promoter/ director/ group and/ or associate company of the Lead Manager is associated with securities related business and registered with SEBI.
• If any one or more of these persons/entities are registered with SEBI, their respective registration numbers.
• If registration has expired reasons for non-renewal.
• Details of any enquiry / investigation conducted by SEBI at any time.
• Penalty imposed by SEBI (Penalty includes deficiency/warning letter, adjudication proceedings, suspension / cancellation / prohibitory orders)
• Outstanding fees payable to SEBI by these entities, if any."

• **Dispatch of issue material:** Lead Merchant Bankers shall ensure that whenever there is a reservation for NRIs, 10 copies of the prospectus together with 1000 application forms are dispatched in advance of the issue opening date directly along with a letter addressed in person to Adviser (NRI), Indian Investment Center, Jeevan Vihar Bldg., Sansad Marg, New Delhi - 110001. Twenty copies of the prospectus and application
forms shall be dispatched in advance of the issue opening date to the various Investors Associations.

- **Underwriting**: While selecting underwriters and finalizing underwriting arrangements, Lead Merchant Bankers shall ensure that the underwriters do not overexpose themselves so that it may become difficult to fulfil underwriting commitments. The overall exposure of underwriter(s) belonging to the same group or management in an issue shall be assessed carefully by the Lead Merchant Banker. OTC Dealers registered with Board under Securities and Exchange Board of India (StockBrokers and Sub-Brokers) Rules and Regulations, 1992 shall be treated at par with the brokers of other stock exchanges in respect of underwriting arrangement.

- **Instructions on post-issue obligations**: The Merchant Banker shall ensure compliance with the following post-issue obligations:

  **Association of Resource Personnel** - In case of over-subscription in public issues, a Board nominated public representative shall be associated in the process of finalization of basis of allotment. The Lead Merchant Banker shall intimate the person so nominated the date, time, venue etc. in respect of process of finalization of basis of allotment. The expenses of the public representatives associated in the allotment process of oversubscribed issues shall be borne by the Lead Merchant Bankers and recovered from the issuers. Honorarium at minimum of Rs.500/- per day plus normal conveyance charges
shall be paid to the public representatives. The Board's Regional Managers at New Delhi, Chennai and Calcutta shall be associated with the public representatives.

**Redressal of investor grievances** - The Merchant Bankers shall assign high priority to investor grievances and take all preventive steps to minimize the number of complaints.

**Submission of post issue monitoring reports** - The concerned Lead Merchant Banker shall submit, in duplicate, the Post Issue Monitoring Reports specified in the Guidelines, within 3 working days from the due dates either by registered post or deliver at respective regional offices/ head office at the addresses.

**Issue of No objection certificate (NOC)** - As per the Listing Agreement of the Stock Exchanges, the issuer companies shall deposit 1% of the amount of securities offered to the public and/or to the holders of the existing securities of the company, as the case may be, with the regional Stock Exchange, which can be released by the concerned stock exchange only after obtaining an NOC from the Board.

**Registration and renewal of registration of Merchant Bankers** - Application for renewal of Certificate of Registration shall be made by the Merchant Bankers as per regulation 9 of Securities and Exchange Board of India (Merchant Bankers) Rules and Regulations, 1992.
Reporting requirements in respect of Merchant Banking activities - In terms of regulation 28 of Securities and Exchange Board of India (Merchant Bankers Regulation) 1992, the Merchant Bankers shall send half yearly report in the format specified relating to their Merchant Banking activities.

Registration with Association of Merchant Bankers of India (AMBI) - Registered Merchant Bankers shall inform the Board of their having become a member of AMBI with relevant details.

Issue of Penalty Points - Penalty points may be imposed on the Merchant Banker for violation of any of the provisions of operational guidelines.

B. DOCUMENTS SUBMITTED BY MERCHANT BANKERS:

The Merchant Bankers have to submit various documents to process the issue of corporates. Different types of schedules, in detail, have to fill by them for submitting to SEBI. The first document of this kind is memorandum of understanding between the lead merchant manager to the issue and the Issuer Company. This schedule specifies the agreement between the company and the Lead Merchant Banker on certain terms to float the issue (Annexure – III.2).
The terms are

- Besides the Lead Merchant Banker, ........... , ........... , and ................., would be acting as the co-managers to the issue.

- The Company hereby declares that it has complied with or agrees to comply with all the statutory formalities under the Companies Act, Guidelines for Disclosure and Investor Protection issued by the Securities and Exchange Board of India (hereinafter referred to as "the Board") and other relevant statutes to enable it to make the issue and in particular in respect of the following matters:

- The company undertakes and declares that any information made available to the Lead Merchant Banker or any statement made in the Offer Documents shall be complete in all respects and shall be true and correct and that under no circumstances it shall give or withhold any information or statement which is likely to mislead the investors.

- The Company also undertakes to furnish complete audited annual report(s), other relevant documents, papers, information relating to pending litigation, etc. to enable the Lead Merchant Banker to corroborate the information and statements given in the Offer Documents.

- The Company shall, if so required, extend such facilities as may be called for by the Lead Merchant Banker(s) to enable him to visit the plant site, office of the Company or such other place(s) to ascertain for himself the true state of affairs of the company including the progress made in respect of the project implementation, status and other facts relevant to the issue.
• The Company shall extend all necessary facilities to the Lead Merchant Banker to interact on any matter relevant to the Issue with the solicitors / legal advisors, auditors, co-managers, consultants, advisors to the Issue, the financial institutions, banks, or any other organization, and also with any other intermediaries who may be associated with the issue in any capacity whatsoever.

• The Company shall ensure that all advertisements prepared and released by the Advertising Agency or otherwise in connection with the Issue conform to regulations, guidelines etc. issued by the Board and instructions given by the Lead Merchant Banker/(s) from time to time and that it shall not make any misleading, incorrect statement in the advertisements, press releases, or in any material relating to the Issue or at any Press / Brokers / Investors Conferences.

• The Company shall not, without prior approval of the Lead Merchant Banker, appoint other intermediaries or other persons such as Registrars to the Issue, Bankers to the Issue, Refund Bankers, Advertising Agencies, Printers for printing application forms, allotment advises / allotment letters, share certificates / debenture certificates, refund orders or any other instruments, circulars, or advises.

• In consultation with the Lead Merchant Banker, the company shall, whenever required, enter into a Memorandum of Understanding with the concerned intermediary associated with the issue, clearly setting forth their mutual rights, responsibilities and obligations. A certified true copy of such Memorandum shall be furnished to the Lead Merchant Banker.

• The Company shall take such steps as are necessary to ensure the completion of allotment and dispatch of letters of allotment and refund orders to the applicants including NRIs soon after the basis of allotment has been approved by the stock exchanges and in any case not
later than the statutory time limit and in the event of failure to do so pay interest to the applicants as provided under the Companies Act, 1956.

- The Company shall take steps to pay the underwriting commission and brokerage to the underwriters and stock brokers, etc. within the time specified in any agreement with such underwriters or within a reasonable time.

- The Company undertakes to furnish such information and particulars regarding the issue as may be required by the Lead Merchant Banker to enable him to file a report with the Board in respect of the issue.

- The company shall keep the Lead Merchant Banker informed if it encounters any problems due to dislocation of communication system or any other material adverse circumstance which is likely to prevent or which has prevented the Company from complying with its obligations, whether statutory or contractual, in respect of the matters pertaining to allotment, dispatch of refund orders / share certificates / debenture certificates etc.

- The company shall not resort to any legal proceedings in respect of any matter having a bearing on the issue except in consultation with and after receipt of the advice from the Lead Merchant Banker.

- The company shall not access the money raised in the issue till finalization of basis of allotment or completion of offer formalities.

- The company shall refund the money raised in the issue to the applicants if required to do so for any reason such as failing to get listing permission or under any direction or order of SEBI. The company shall pay requisite interest amount if so required under the laws or direction or order of SEBI.
- Clauses relating to rights of Lead Merchant Banker vis-à-vis the issuer shall be inserted.
- Consequences of breach.

Secondly, the interse allocation of responsibilities for both pre-issue and post-issue is important. These are,

- The Lead Merchant Bankers shall make interse allocation of the activities / sub activities.

- The Lead Merchant Banker shall ensure that activity wise allocation is properly delineated and that the Board is advised the name of the Lead Merchant Banker responsible for each set of activities / sub-activities, well before opening of issue. This advice must be signed by all Lead Merchant Bankers to issue.

- Where the circumstances warrant joint and several responsibility of Lead Merchant Bankers for a particular activity, a co-ordinator designated from among the Lead Merchant Bankers shall furnish to the Board, when called for, with information, report, comments etc. on matters relating to the activity (of joint and several responsibility).

- The activities / sub-activities may be grouped on the following lines:

  (a) Capital structuring with the relative components and formalities such as composition of debt and equity, type of instruments.

  (b) Drafting and Design of the offer document and of advertisement / publicity material including newspaper advertisements and brochure / memorandum containing salient features of the offer document.
(c) The designated Lead Merchant Banker shall ensure compliance with the Guidelines for Disclosure and Investor Protection and other stipulated requirements and completion of prescribed formalities with Stock Exchange, Registrar of Companies and SEBI.

(d) Marketing of the issue, which will cover, inter-alia, formulating marketing strategies, preparation of publicity budget, arrangements for selection of (i) ad-media, (ii) centers of holding conferences of brokers, investors etc. (iii) bankers to issue, (iv) collection centers (v) brokers to issue and (vi) underwriters and the underwriting arrangement, distribution of publicity and issue material including application form, prospectus and brochure, and deciding on the quantum of issue material.

(e) Selection of various agencies connected with issue, namely Registrars to Issue, printers and advertising agencies.

(f) Follow-up with bankers to the issue to get quick estimates of collection and advising the issuer about closure of the issue based on the correct figures.

(g) The post-issue activities will involve essential follow-up steps, which must include finalization of basis of allotment / weeding out of multiple applications, listing of instruments and dispatch of certificates and refunds, with the various agencies connected with the work such as registrars to the issue, bankers to the issue, and the bank handling refund business.

(h) Even if many of these post-issue activities would be handled by other intermediaries, the designated Lead Merchant Banker shall be responsible for ensuring
that these agencies fulfil their functions and enable him to discharge this responsibility through suitable agreements with the issuer company.

(i) Ordinarily, one Lead Merchant Banker shall be responsible for post issue activities.

Another important document to be submitted to SEBI is Due Diligence Certificate. This should be given by Lead Merchant Banker along with the offer document (Annexure -Schedule III)

- Memorandum and Articles of Association of the Company.
- Letter of Intent/SIA Registration/Foreign Collaboration Approval/Approval for import of plant and machinery, if applicable.
- Necessary clearance from governmental, statutory, municipal authorities etc. for implementation of the project, wherever applicable.
- Documents in support of the track record and experience of the promoters and their professional competence.
- Listing agreement of the Company for existing securities on the Stock Exchanges.
- Consent letters from Company's auditors, Bankers to issue Bankers to the Company, Lead Merchant Bankers, and Brokers and where applicable, Proposed Trustees.
- Applications made by the company to the financial institutions/banks for financial assistance as per object of the Issue and copies of relative sanction letters.
- Underwriting letters from the proposed underwriters to the issue.
- Audited Balance Sheets of the Company/Promoter companies for relevant periods.
• Auditors certificate regarding tax-benefits available to the Company,
• Shareholders and Debenture holders.
• Certificate from Architects or any other competent authority on project implementation schedule furnished by the company, if applicable.
• Reports from Government agencies / expert agencies / consultants / company regarding market demand and supply for the product, industry scenario, standing of the foreign collaborators, etc.
• Documents in support of the infrastructure facilities, raw material availability, etc.
• Auditors' Report indicating summary of audited accounts for the period including that of subsidiaries of the company.
• Stock Exchange quotations of the last 3 years duly certified by regional stock exchange in case of an existing company.
• Applications to RBI and approval thereof for allotment of shares to non-residents, if any, as also for collaboration terms and conditions.
• Minutes of Board and General Body meetings of the company for matters, which are in the prospectus.
• Declaration in Form 32 from Directors (for particulars of Directorship) or the Company Secretary's certificates in this regard.
• Revaluation certificate of company's assets given by Government Valuer or any other approved Valuer.
• Environmental clearance as given by Pollution Control Board of the State Government or the Central Government as applicable.
• Certificate from company's solicitors in regard to compliance of legal provisions of the Prospectus as also applicability of FERA/MRTP provisions to the company.

• Other documents, reports etc. as are relevant / necessary for true, fair and adequate disclosures in the draft prospectus / letter of offer (to give details).

• True copy of the Board resolution passed by the issuer authorizing a representative of the Registrar to act on its behalf in relation to handling of stockinvests.

Besides, the Merchant Banker has to submit various forms depending up on the type of the issues. The list of these forms is,

• Due Diligence Certificate at the Time of Filing the Offer Document with Roc. (Annexure – III.4)

• Due Diligence Certificate at the Time of Opening of the Issue. (Annexure – III.5)

• Due Diligence Certificate after the Issue has opened but before it closes For Subscription. (Annexure – III.6)

• Mandatory Collection Centers

• Promoters Contribution And Lock-in

• Promoters Contribution And Lock-In In Respect Of Promoters Whose Name Figure In The Prospectus As Promoters In The Paragraph On "Promoters And Their Background"

• Statement of profits and losses

• Statement of Assets and Liabilities

• Tax shelter Statement

• Capitalization Statement

• Auditor's Certificate regarding Profit forecast

• Basis for Issue Forecast
The Merchant Banker has to provide additional information at the time of renewal of registration to continue to provide the services. The significant information to be provided in this regard is

- **Key personnel:** Detailed bio-data clearly giving following information for the key personnel who joined Merchant Banking division after the previous registration. (a) Name, (b) Qualification, (c) Designation in the applicant company and (d) Experience Details giving information about: name of the organization, duration, area of work [including of applicant company, if any]. A copy of experience certificate from previous employers, copy of Appointment letter, acceptance letter, copy of experience certificates and copy of salary slip in the Applicant Company.

- **Details of directors:** If any of the Directors are wholetime directors the same to be indicated.

- **Details of membership of stock exchange:** If the applicant company / associate company / group company / subsidiary company of these are member of any recognized stock exchange, the following be submitted:

  i) A conduct certificate from the concerned stock exchange regarding its functioning as member.
ii) Details regarding payment of fees and also whether the member is facing any charges/disciplinary action or if in past any such action has been taken by the concerned stock exchange/Board.

iii) NOC from the stock exchange for functioning as a Merchant Banker (in case applicant company holds a corporate membership)/Director/full time employee.

• **Final accounts:** A Copy of Audited annual accounts (including Auditors report and schedules) as on ...... .........(latest FY)/ as on date of meeting the net worth criteria. State whether issuer company is registered as Non Banking Finance Company with RBI. If yes, state the place where it is registered and give the registration number and details about any comment of RBI for their inspection for latest three financial years.

• **Declarations to be furnished:** (to be signed by two Directors)

"We hereby declare and undertake as under:

i) That the applicant company, its promoter, director, partner or employee has not at any time been convicted for any offence involving moral turpitude or has been found guilty of any economic offence.

ii) That the applicant company/associate company, its promoters, directors, partners or employees are not involved in any litigation connected with the securities market and there are no charges against them as on date.

iii) That none of the associate, subsidiary, inter-connected or Group Company of the Applicant Company has applied or has been granted registration by the board to undertake Merchant Banking activities."
iv) That the applicant company/associate company, its directors, partners are not facing any charges/disciplinary action from any stock exchange.

v) That the applicant company, its associates, its director, partner or principal officer is not involved in the securities scam and are not named in the Janakiraman Committee Report/JPC Report. (If involved, detailed comments may be forwarded).

vi) That all investments indicated in the certified annual accounts are held in the name of the company only." (If not, details of such holdings may be forwarded).

The Merchant Bankers regulations, inter-alia provide for registration of Merchant Bankers, code of conduct, maintenance of books of accounts, submission of half yearly results, appointment of Lead Managers and their responsibilities, underwriting, inspection of books and penalties for default. The Merchant Bankers acting, as Lead Managers to public issues are required to submit a due diligence certificate to SEBI upon verification of the contents of the offer documents. Where there is more than one Lead Manager, a statement of inter se allocation of responsibilities among the Lead Managers is required to be submitted to SEBI.

A Merchant Banker applicant for registration directly to SEBI. The registration is valid for three years and has then to be renewed. The Merchant Banker's status may be a public or private limited company, an unlimited company, a partnership, proprietary or some others under the old regulations, but the new regulations allow only body corporate to operate as Merchant Bankers. The information that a Merchant Banker applicant is required to furnish to SEBI in the application form is much more extensive and comprehensive than that for a stockbroker applicant.
There are four categories of registered Merchant Bankers under the old regulations; there is only one, namely "Merchant Banker" as amended recently. This corresponds to Category I under the old regulations. Each category has a different scope of activities that the registered Merchant Bank is permitted to carry out. The four categories under the old regulations are shown in Table I. Merchant Bankers presently functioning in Category II, III or IV, will be given the option to either upgrade themselves as Merchant Bankers in the new category, or seek separate registrations as underwriters or portfolio managers under the respective regulations. Otherwise, their present registrations will lapse at the end of the current period of registration.

**TABLE III.1**

FOUR CATEGORIES OF MERCHANT BANKER REGISTRATION (OLD REGULATIONS)

<table>
<thead>
<tr>
<th>Category</th>
<th>I</th>
<th>II</th>
<th>III</th>
<th>IV</th>
</tr>
</thead>
<tbody>
<tr>
<td>Any activity of the issue management</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>consisting of preparation of prospectus and</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>other information relating to the issue,</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>determining financial structure, tie-up of</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>financiers and final allotment and refund of</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>the subscriptions</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Manager</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Co-Manager</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Underwriter</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Portfolio Manager</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Adviser or Consultant to an issue</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Number of Registrants (as of March 31, '97)</td>
<td>440</td>
<td>107</td>
<td>172</td>
<td>444</td>
</tr>
</tbody>
</table>

Legend: Permitted to be carried out * Not explicit in letters of the regulations
A Merchant Banker applicant must satisfy, among other things, the capital adequacy requirement. Under the old regulations there were different capital adequacy requirements for the various categories. Table II summarized the minimum amount of net worth that the applicant had to have at the time of application, and had to maintain after registration under the old regulations. Net worth is defined as the sum of the capital contributed to the business (in the case of a partnership or the paid-up capital (in the case of a corporation) plus free reserves. Only the requirement for the present Category I applies under the new regulations.

### TABLE III.2
#### CAPITAL ADEQUACY REQUIREMENT FOR MERCHANT BANKER APPLICANT (OLD REGULATIONS)

<table>
<thead>
<tr>
<th>Types of Categories</th>
<th>Minimum Amount of Net Worth</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category -- I</td>
<td>Rs. 60,000,000²³¹⁸</td>
</tr>
<tr>
<td>Category -- II</td>
<td>Rs. 5,000,000</td>
</tr>
<tr>
<td>Category -- III</td>
<td>Rs. 2,000,000</td>
</tr>
<tr>
<td>Category -- IV</td>
<td>Nil.</td>
</tr>
</tbody>
</table>

Under the old regulations, a Merchant Banker in Category I is allowed to undertake underwriting and portfolio management activities in addition to issue management, as shown in Table I. Though the new category of the Merchant Banker generally takes over the present Category I, a Merchant Banker under the new regulation undertakes issue management and underwriting activities, but has to seek a separate registration to act as a portfolio manager under the relevant regulations. The new regulations have drawn a clear-cut line between the Merchant Banker and the non-banking finance company (NBFC). Under the old regulations, a Merchant Banker is allowed to carry out fund-based activities such as deposit taking, leasing, bill discounting and hire purchasing.
However, the new regulations no longer allow a Merchant Banker to engage in these fund-based activities except for those related exclusively to the capital market such as underwriting. The Merchant Banker is required to break away such activities in a period of two years. Correspondingly, an existing NBFC performing Merchant Banking activities is required to relinquish such activities after a certain period of time.\textsuperscript{20}

The Merchant Banking industry in India has been rife with problems, which have recently led SEBI to make drastic changes to the Merchant Banking regulations. The problems are twofold: nominal registration as Merchant Bankers; and incompetence of many Merchant Bankers.

From Table I above, it is obvious that there are too many Merchant Bankers. The majority of them have conducted few significant activities in such capacity. Only 20 Merchant Bankers of Category I reportedly account for 60-85\% of the Merchant Banking business\textsuperscript{21} while 148 of them are in business only on paper.\textsuperscript{22} In May 1997,\textsuperscript{23} a substantial number of Merchant Bankers were found to be professionally imprudent or negligent in their practices. SEBI listed 134 Merchant Bankers of Categories II, III, and I who broke their underwriting commitments for possible disciplinary actions. 95 Category I Merchant Bankers were included in the list.\textsuperscript{24} More evidence of the problem is the dishonorable track record of listing delay or rejection of initial public offerings (IPOs) (see "Listing Delay or Rejection" in Section 8.1.5). The incompetence of the Merchant Bankers who managed such IPOs was materially responsible for the troubled deals.
AMENDMENTS TO THE MERCHANT BANKING REGULATIONS (1997-98):

During the year 1997-98, there were a few changes in the Merchant Bankers Regulations in order to streamline and strengthen the role of SEBI and RBI to impart transparency to Merchant Banking activities.

Prior to these amendments, most of the Merchant Bankers were carrying on both fund based as well as fee based activities. Fund based activities included leasing, hire purchase etc. whereas fee based activities included Merchant Banking and underwriting. However, it was seen that fund based activities, which were regulated by the RBI, were resulting in erosion of net worth. The SEBI requires Merchant Bankers (Category I) registered with it to have a minimum net worth of Rs. 5 crore. Since this was an essential condition to grant registration and erosion of the same was not in the interest of the Merchant Bankers. As one entity was being regulated by two regulatory bodies viz. The SEBI and RBI, close monitoring of the net worth on a continuous basis was not possible. Thus it was decided to clearly segregate the activities (carried on by the same entity) as those which would be regulated by the SEBI and RBI. To achieve this end, Merchant Banking Regulations were amended with effect from December 9, 1997.

As per the amended guidelines, a Merchant Banker Category I (excluding banks and financial institutions) is disallowed from carrying on any activity other than that relating to securities market. The amendment stipulates that a Merchant Banker carrying on fund based and merchant-banking activities would have to either discontinue the activities not related to the securities market or hive off its Merchant Banking activity. The rational to segregate the two functions of the Merchant
Bankers is to eliminate the overlapping of accounts of Merchant Banking and fund-based activity thus facilitating greater accountability and better monitoring.

On repeated representations from Merchant Bankers for extension of time to comply with the aforesaid notifications the Merchant Bankers were given 6 months up to June 30, 1998 to segregate their activities. The above amendment also abolished the pre-existing multiple categories of Merchant Bankers viz. Category II, III and IV. Category II Merchant Banker could carry on activities of a portfolio manager and underwriter whereas Category III Merchant Banker could carry on activities of underwriter only. The SEBI already has separate Regulations for Portfolio Managers and Underwriters and to take care of the overlapping, it was felt that the Category II and III Merchant Bankers could continue to carry on their activities but by applying for registration under the Underwriters and Portfolio Manages Regulations. However, existing Category II and III Merchant Bankers could continue to carry on underwriting and portfolio management activities until their registration expires. Thus there is only one entity i.e. Category I Merchant Banker who can carry on issue management activity only.

As the SEBI has given up vetting of prospectuses, the Merchant Bankers role of exercising due diligence and compliance with the SEBI regulations has required more importance.

UNDERWRITERS:

The underwriter is defined as a person who engages in the business of underwriting of an issue of securities of a body corporate, where underwriting means an agreement with or without conditions to subscribe to the securities of a body corporate when the existing shareholders of such a body corporate or the public do not subscribe to the securities offered to them. No person is allowed
to as an underwriter unless he or she holds a certificate granted by SEBI.26 There were 34 underwriters registered with SEBI as of 31 March 1997, in addition to 719 Merchant Bankers of categories I, II, and III who can also act as underwriters.

An underwriter applicant applies for registration directly to SEBI.27 The registration is valid for three years and has to renewed 28 thereafter. The underwriter' status may be a public or private limited company, an association of persons, a body of individuals, a partnership, a proprietary or others.29 Every registered stockbroker or registered category I, II, and III Merchant Banker is entitled to act as an underwriter without any separate registration.30

An underwriter applicant must satisfy, among other things, the capital adequacy requirement; the applicant must have a net worth of Rs. 2,000,000 (approximately US $ 57,000) at the time of application31 and must maintain this even after registration.32 The net worth is defined as the sum of the capital contributed to the business (in the case of a partnership) or the paid-up capital (in the case of a corporation) plus free reserve.

RESPONSIBILITIES OF MERCHANT BANKER:

To The Investors:

Investor protection is fundamental to a healthy growth of the Capital Market. Protection is not to be conceived as that of compensating for the losses suffered. The responsibility of the Merchant Banker in ensuring the completeness of the disclosures is of paramount importance in view of the fact that entire reliance is based on offer Document either Prospectus or Letter of Offer because an independent agency like a Merchant Banker has done the scrutiny.
Capital Structuring:
The Merchant Bankers while designing the capital structure take into account the various factors such as Leverage effect on earnings per share, the project cost and the gestation period, cash flow ability of the company, the cost of capital, the considerations of management control, size of the company, and general economic factors. These excises are done mainly in order to meet the fund requirement of the company taking due cognizance of the investors' preference.

Project Evaluation And Due Diligence:
Due diligence and project evaluation is another major responsibility of the Merchant Banker. Where the project has already been appraised by a bank/financial institution, the Merchant Banker relies on the said appraisal before accepting an assignment. However, where the project has not been appraised by a bank/financial institution, the Merchant Bank undertakes a detailed evaluation of the project before taking up an assignment for issue management.

Legal Aspects:
The factors that are looked into in case of the legal aspects are:

- Compliance with the SEBI guidelines, the Companies Act, the Securities Contracts Regulation Act and Rules and the various guidelines issued by the Ministry of Finance and Department of Company Affairs.
- Pending litigations, disputes, defaults, overdues to financial institutions and banks, proceedings initiated for economic offences against the promoters in respect of any of their business ventures in India or against the promoter's ventures or associate/group companies.
• Pending litigation's towards tax liabilities or any criminal/civil prosecution any of the directors for any offenses.
• Material litigation pertaining to either the matters likely to affect the operations and finances of the company.
• Criminal prosecution launched against the company and its directors for alleged offences under the enactment's specified in Part I of Schedule XIII of the Companies Act.
• Defaults in meeting statutory dues, institutional dues and dues towards instruments holders like fixed deposit holders.
• Material developments after the date of the last Balance Sheet.
• Fair and adequate disclosures in the prospectus.

**Pricing Of the Issue:**

The Merchant Banker looks into the various factors while pricing the issue. Some of the factors are past financial performance of the company, Book value per share, Stock market performance of the shares (for existing companies, stock market perception of the company/group/promoters, Price earnings ratio of the company/industry, brand equity, if any. The Merchant Banker has a vital role to play in pricing of the instrument.

**Marketing of the Issue:**

Marketing of the issue is a vital responsibility of the Merchant Banker. The first stage in the Pre-issue marketing for placement of the issue with the financial institutions, banks, mutual funds, FII's and NRI's. The second stage is the marketing of the issue to the general public through various vehicles such as press, brokers, etc.
Bought Out Deals:

The concept of wholesale buy out of public offerings by the Merchant Bankers started off with the over the Counter Exchange Of India where a Merchant Banker acts also as a sponsor and either takes up the entire issue to be offered wholly or jointly with other co-investors and offloads the same to the public at a later date by an offer for sale. The role of a Merchant Banker on the OTC exchange is not only that of a Merchant Banker but that of an Investment Banker too. Major amendments were made to the SEBI regulations regarding Merchant Bankers in September 1997. Both the old and new regulatory frameworks for Merchant Bankers are presently in force. The duration of this transition period has not officially been announced.

Conclusion:

The Securities and Exchange Board of India has given up one of its primary responsibilities, that of vetting of offer documents. While this will avoid giving a wrong impression that the regulatory body approves of the project that has been vetted, it will also put the onus of disclosure completely on the Merchant Banker. Though SEBI has made the Merchant Bankers accountable through mandatory financial participation in the project, the new regulation is feared to further erode investor confidence in the bourses.

In accordance with the Melagam Committee recommendation, the Department of Company Affairs has made it mandatory for companies to disclose the end use of the funds raised through the capital market but not used for the specific project. For this purpose, the balance sheet has also been modified to include a separate item, under the heading “Balance of unutilized monies raised by issue”. The arrangement will indicate the form in which the unutilized funds have been invested or lent out by the companies.
SEBI has given its permission to FIs to invest 100 percent of their dedicated debt funds in debt securities of any maturity, subject to an overall cap of $1 billion to $1.5 billion. The FIs willing to take this investment route will be required to register separately with SEBI as 100 per cent debt funds and will be allowed to invest only in companies that are listed or would be listed. SEBI will also impose individual ceilings on these funds subject to the track record of the FIs or their fund-managing experience. However, no limit exists on investment in debt securities of any particular issuer.

Following the Dave Committee recommendations for reviving the Over-the-Counter Exchange of India, SEBI has made several concessions: Trading of equity shares of unlisted companies has been allowed on OTCEI: companies of any size can be listed on the Exchange (upper limit of Rs.25 crores as capital has been removed): companies (including bought-out deals) not satisfying the three-year dividend track record or not appraised or funded by any financial institution have been allowed listing, provided they satisfy the listing criteria of the Exchange. SEBI also proposes a T-5 settlement system for OTCEI. However, such companies will be required to remain listed for a minimum of three years.

Financial Institutions (FIs) have been directed by the Finance Ministry to underwrite public issues whose proceeds are planned to be channeled to projects vetted by them. They have also been directed to pick up the shares of these issues, in case a devolvement is clearly visible. The directive has, however, displeased the FIs which fear that locking up funds in projects and underwriting issues will cut into their own profits.
REFERENCES:

1. Dhananjay Sahal, “Merchant Banking”, MFC – II

2. The most famous was Cosimo de Medici who in the mid-fifteenth century established a network of operations beyond Italy with offices in London, Bruges (Bengium) and Avignon (France). Adopted from (Manchiraju, HR, "Merchants Banking: Principles and Practice", New Age International (P) Ltd., publishers, New Delhi, P.1)

3. Manchiraju, HR, "Merchants Banking: Principles and Practice", New Age International (P) Ltd., publishers, New Delhi, P.1


5. Ibid. Section 3.


7. Manchiraju, HR, "Merchants Banking: Principles and Practice", New Age International (P) Ltd., publishers, New Delhi, P.7

8. The oldest Merchant Bank in London was Baring Brothers and it was very prominent in Europe during the nineteenth century. It had considerable representation in North and South America.


10. Section 3 (1) of the SEBI (Merchant Bankers) Regulations, 1992.


12. Section 2.3 of Form A, the SEBI (Merchant Bankers) Regulations, 1992.


14. The activities or functions set forth in Section 3 of the Regulations do not exactly match those in Form B (Certificate of Registration). “Investment Advisor” is included in Form B but not in Section 3 of the regulations.


17. Ibid. Section 36 (1) (vi).

18. Increased from Rs. 10,000,000 by Notification No. SEBI/CE/1/94-95 dated 7-9-1995.

20. Ibid. Section 5. D.


25. Section 2 (f) & (g) of the SEBI (Underwriters) Rules, 1993

26. Ibid., Section 3

27. Section 3 (1) of the SEBI (Underwriters) Regulations, 1993

28. Section 5 of the SEBI (Underwriters) Rules, 1993

29. Section 2.3 of Form A, the SEBI (Underwriters) Regulations, 1993

30. Section 3 (2) of the SEBI (Underwriters) Rules, 1993

31. Ibid. Section 7 (1).

32. Ibid. Section 26. (1) (vi)
ANNEXURE – III.1
THE GAZETTE OF INDIA
EXTRAORDINARY
PART III - SECTION 4
PUBLISHED BY AUTHORITY
BOMBAY 22nd DECEMBER, 1992
SECURITIES AND EXCHANGE BOARD OF INDIA
NOTIFICATION
BOMBAY 22nd DECEMBER, 1992
SECURITIES AND EXCHANGE BOARD OF INDIA
(MERCHANT BANKERS) REGULATIONS, 1992

No.LE/11112/92. In exercise of the powers conferred by Section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board with the previous approval of the Central Government hereby makes the following regulations, namely: -

CHAPTER I
PRELIMINARY

Short title and commencement
(1) These regulations may be called the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992.
(2) They shall come into force on the date of their publication in the Official Gazette.

Definitions
2. In these regulations, unless the context otherwise requires, -“enquiry officer” means any officer of the Board, or any other person, having experience in dealing with the problems relating to the securities market, who is authorized by the Board under Chapter V. (b)”form " means a form specified in Schedule I. (c)”inspecting authority” means one or more persons appointed by the Board to exercise powers conferred under Chapter IV; (d) "principal officer " means - (i) proprietor, in the case of a proprietary concern; (ii) partner, in the case of a partnership firm; (iii) director, in the case of a body corporate, who is responsible for the activities of the Merchant Banker; “rules” means Securities and Exchange Board of India (Merchant Bankers) Rules, 1992. Words and expressions used and not defined in these regulations but defined in the Act and the rules shall have the meanings respectively assigned to them in the Act or the rules as the case may be.

CHAPTER II
REGISTRATION OF MERCHANT BANKERS

Application for grant of certificate
3 (1) An application by a person for grant of a certificate shall be made to the Board in Form A.
(2) The application under sub- regulation (1) shall be made for any one of the following categories of the Merchant Banker namely: - (a) Category I, that is - (i) to carry on any activity of the issue management, which will inter-alia consist of preparation of prospectus and other information relating to the issue, determining financial structure, tie-up of financiers and final allotment and refund of the subscription; and (ii) to act as adviser, consultant, manager, underwriter, portfolio manager. (b) Category II, that is, to act as adviser, consultant, co- manager, underwriter, portfolio manager. (c) Category III, that is to act as underwriter, adviser, consultant to an issue; (d) Category IV, that is to act only as adviser or consultant to an issue.

1[(2A) Notwithstanding anything contained in this regulation, with effect from 9th December, 1997, (i) an application under sub-regulation (2) can be made only for carrying on the activities mentioned in clause (a) therein, and (ii) an applicant can carry on the activity as underwriter only if he obtains separate certificate of registration under the provisions of Securities and Exchange Board of India (Underwriters) Regulations, 1993, and (iii) an applicant can carry on the activity as portfolio manager only if he obtains separate certificate of registration under the provisions of Securities and Exchange Board of India (Portfolio Manager) Regulations, 1993.]

3 (3) Notwithstanding anything contained in sub-regulation (1), any application made by a Merchant Banker prior to coming into force of these regulations containing such particulars or as near thereto as mentioned in Form A shall be treated as an application made in pursuance of sub-regulation (1) and dealt with accordingly.
Application to conform to the requirements

(4) Subject to the provisions of sub-regulation (3) of regulation 3, any application, which is not complete in all respects and does not conform to the instructions specified in the form, shall be rejected. Provided that, before rejecting any such application, the applicant shall be given an opportunity to remove within the time specified such objections as may be indicated by the Board.

Furnishing of information, clarification and personal representation

5. (1) The Board may require the applicant to furnish further information or clarification regarding matters relevant to the activity of a Merchant Banker for the purpose of disposal of the application. (2) The applicant or its principal officer shall, if so required, appear before the Board for personal representation.

Consideration of application

6. The Board shall take into account for considering the grant of a certificate, all matters which are relevant to the activities relating to Merchant Banker and in particular the applicant complies with the following requirements, namely:

2(a) the applicant shall be a body corporate other than a non-banking financial company as defined under clause (f) of section 45-1 of the Reserve Bank of India Act, 1934, (2 of 1934) as amended from time to time; (3) [Provided that the Merchant Banker who has been granted registration by the Reserve Bank of India to act as a Primary or Satellite dealer may carry on such activity subject to the condition that it shall not accept or hold public deposit] (4) [Provided that the applicant has the necessary infrastructure like adequate office space, equipments, and manpower to effectively discharge his activities; (b) the applicant has in his employment minimum of two persons who have the experience to conduct the business of the Merchant Banker; (c) a person directly or indirectly connected with the applicant has not been granted registration by the Board;]

Explanation:

For the purposes of this clause the expression "directly or indirectly connected" means any person being an associate, subsidiary, inter-connected or group Company of the applicant in case of the applicant being a body corporate. (d) the applicant fulfils the capital adequacy requirement specified in regulation 7; (e) the applicant, his partner, director or principal officer is not involved in any litigation connected with the securities market which has an adverse bearing on the business of the applicant; (f) the applicant, his director, partner or principal officer has not at any time been convicted for any offence involving moral turpitude or has been found guilty of any economic offence; (g) the applicant has the professional qualification from an institution recognized by the Government in finance, law or business management; (h) grant of certificate to the applicant is in the interest of investors.

Capital Adequacy Requirement

7. (1) The capital adequacy requirement referred to in sub-regulation (d) of regulation 6 shall not be less than the net worth of the person making the application for grant of registration. (2) For the purposes of sub-regulation (1), the net worth shall be as follows, namely:

<table>
<thead>
<tr>
<th>Category</th>
<th>Minimum Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category I</td>
<td>Rs.5,00,00,000</td>
</tr>
<tr>
<td>Category II</td>
<td>Rs.50,00,000</td>
</tr>
<tr>
<td>Category III</td>
<td>Rs.20,00,000</td>
</tr>
<tr>
<td>Category IV</td>
<td>Nil</td>
</tr>
</tbody>
</table>

Explanation:

For the purposes of this regulation "net worth" means in the case of an applicant which is a partnership firm or a body corporate, the value of the capital contributed to the business of such firm or the paid up capital of such body corporate plus free reserves as the case may be at the time of making application under sub-regulation (1) of regulation 3.

Procedure For Registration

8. (1) The Board on being satisfied that the applicant is eligible shall grant a certificate in Form B. [***].

(2) [Omitted by the Securities and Exchange Board of India (Merchant Bankers) Amendment Regulations, 1997 with effect from December 9, 1997 vide S.O.No. 837(E)]

(3) [Omitted by the Securities and Exchange Board of India (Merchant Bankers) Amendment Regulations, 1997 with effect from December 9, 1997 vide S.O.No. 837(E)]

(4) On the grant of a certificate the applicant shall be liable to pay the fees [***] in accordance with Schedule II, [***]

Renewal of certificate

9. (1) Three months before expiry of the period of certificate, the Merchant Banker, may if he so desires, make an application for renewal in Form A.

(2) The application for renewal, under sub-regulation (1) shall be dealt with in the same manner as if it were a fresh application for grant of a certificate.

10 [Provided that in case of an application for renewal of certificate of registration, the provisions of clause (a) of regulation 6 shall not be applicable up to June 30th, 1998]
The Board on being satisfied that the applicant is eligible for renewal of certificate shall grant a certificate in Form B and send intimation to the applicant.

Procedure where registration is not granted

10. (1) Where an application for grant of a certificate under regulation 3 or of renewal under regulation 9, does not satisfy the criteria set out in regulation 6, the Board may reject the application after giving an opportunity of being heard.

(2) The refusal to grant registration shall be communicated by the Board within thirty days of such refusal to the applicant stating therein the grounds on which the application has been rejected.

(3) Any applicant may, being aggrieved by the decision of the Board, under sub-regulation (1), apply within a period of thirty days from the date of receipt of such intimation to the Board for reconsideration of its decision.

(4) The Board shall reconsider an application made under sub-regulation (3) and communicate its decision as soon as possible in writing to the applicant.

Effect of refusal to grant certificate

11. Any Merchant Banker whose application for a certificate has been refused by the Board shall on and from the date of the receipt of the communication under sub-regulation (2) of regulation 10 cease to carry on any activity as Merchant Banker.

Payment of fees and the consequences of failure to pay fees

12. (1) Every applicant eligible for grant of a certificate shall pay such fees in such manner and within the period specified in Schedule II.

(2) Where a Merchant Banker fails to pay the Annual fees as provided in sub-regulation (1), read with Schedule II, the Board may suspend the registration certificate, whereupon the Merchant Banker shall cease to carry on any activity as a Merchant Banker for the period during which the suspension subsists.

CHAPTER III
GENERAL OBLIGATIONS AND RESPONSIBILITIES

Code of Conduct

13. Every Merchant Banker shall abide by the Code of Conduct as specified in Schedule III.
14(Merchant Banker not to associate with any business other than that of the securities market- 
13A - No Merchant Banker, other than a bank or a public financial institution, who has been granted a certificate of registration under these regulations shall 15(after June 30th, 1998) carry on any business other than that in the securities market.

Notwithstanding anything contained above, a Merchant Banker who prior to the date of notification of the securities and exchange board of India (Merchant Bankers) Amendment Regulations, 1997, has entered into a contract in respect of a business other than that of the securities market, may, if he so desires, discharge his obligations under such contract

16(Provided that a Merchant Banker who has been granted certificate of registration to act as primary or satellite dealer by Reserve Bank of India, may carry on such business as may be permitted by Reserve Bank of India]

Explanation - for the purposes of this regulation:

A "bank" shall mean a banking company as defined under section 5 of the Banking Regulation Act, 1949 (10 of 1949) and the corresponding new bank set up under the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 (5 of 1970) and Banking Companies (Acquisition and Transfer of Undertaking) Act, 1980 (40 of 1980), State Bank of India Act, 1955 (23 of 1955) and State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959). A "public financial institution" shall have the same meaning as assigned to the term under Section 4A of the Companies Act, 1956 (1 of 1956) and shall include Industrial Development Corporations and Financial Corporations established by the Central Government or State Governments as the case may be]

Maintenance of books of accounts, records etc.

14. (1) Every Merchant Banker shall keep and maintain the following books of accounts, records and documents namely: - (a) a copy of balance sheet as at the end of each accounting period; 
(b) a copy of profit and loss account for that period; 
(c) a copy of the auditor's report on the accounts for that period; and 
(d) a statement of financial position. (2) Every Merchant Banker shall intimate to the Board the place where the books of accounts, records and documents are maintained. (3) Without prejudice to sub-regulation (1), every Merchant Banker shall, after the end of each accounting period furnish to the Board copies of the balance sheet, profit and loss account and such other documents for any other preceding five accounting years when required by the Board.

Submission of Half-yearly results

15. Every Merchant Banker shall furnish to the Board half-yearly unaudited financial results when required by the Board with a view to monitor the capital adequacy of the Merchant Banker.

Maintenance of books of account, records and other documents

16. The Merchant Banker shall preserve the books of accounts and other records and documents maintained under regulation 14 for a minimum period of five years.

Report on steps taken on Auditor's report

17. Every Merchant Banker shall within two months from the date of the auditors' report take steps to rectify the deficiencies, made out in the auditor's report.

Appointment of Lead Merchant Bankers

18. (1) All issues should be managed by at least one Merchant Banker functioning as the Lead Merchant Banker: Provided that, in an issue of offer of rights to the existing members with or without the right of renunciation the amount of the issue of the body corporate does not exceed rupees fifty lakhs, the appointment of a Lead Merchant Banker shall not be essential. 
(2) Every Lead Merchant Banker shall before taking up the assignment relating to an issue, enter into an agreement with such body corporate setting out their mutual rights, liabilities and obligations relating to such issue and in particular to disclosures, allotment and refund.

Restriction on appointment of lead managers

19. The number of Lead Merchant Bankers may not, exceed in case of any issue of - Size of issue No. of Merchant Bankers (a) Less than rupees fifty crores Two(b)Rupees fifty crores but less than rupees one hundred crores. Three(c) Rupees one hundred crores but less than rupees two hundred crores. Four (d) Rupees two hundred crores but less than rupees four hundred crores. Five (e) Above Rupees four hundred crores five or more as may be agreed by the board. Responsibilities of lead managers

20. (1) No lead manager shall agree to manage or be associated with any issue unless his responsibilities relating to the issue mainly, those of disclosures, allotment and refund are clearly defined, allocated and determined and a statement specifying such responsibilities is furnished to the Board at least one month before the opening of the issue for subscription: Provided that where there are more than one Lead Merchant Bankers to the issue the responsibilities of each of such Lead Merchant Banker shall clearly be demarcated and a statement specifying such responsibilities shall be furnished to the Board at least one month before the opening of the issue for subscription.
(2) No Lead Merchant Banker shall agree to manage the issue made by any body corporate if such body corporate is an associate of the Lead Merchant Banker.

Lead Merchant Banker not to associate with a Merchant Banker without registration

21. A Lead Merchant Banker shall not be associated with any issue if a Merchant Banker who is not holding a certificate is associated with the issue.

Underwriting obligations

22. (1) In respect of every issue to be managed, the Lead Merchant Banker holding a certificate under Category I shall accept a minimum Underwriting obligation of five percent of the total underwriting commitment or rupees twenty-five lacs, whichever is less;

Provided that, if the Lead Merchant Banker is unable to accept the minimum underwriting obligation, that Lead Merchant Banker shall make arrangement for having the issue underwritten to that extent by a Merchant Banker associated with the issue and shall keep the Board informed of such arrangement.

Submission of due diligence certificate

23. The Lead Merchant Banker, who is responsible for verification of the contents of a prospectus or the Letter of Offer in respect of an issue and the reasonableness of the views expressed therein, shall submit to the Board at least two weeks prior to the opening of the issue for subscription, a due diligence certificate in Form C.

Documents to be furnished to the Board

24. (1) The lead manager responsible for the issue shall furnish to the Board, the following documents, namely: - (i) particulars of the issue; (ii) draft prospectus or where there is an offer to the existing shareholders, the draft letter of offer; (iii) any other literature intended to be circulated to the investors, including the shareholders; and (iv) such other documents relating to prospectus or letter of offer as the case may be. (2) The documents referred to in sub-regulation (1) shall be furnished at least two weeks prior to date of filing of the draft prospectus or the letter of offer, as the case may be, with the Registrar of Companies or with the Regional Stock Exchanges, or with both. (3) The lead manager shall ensure that the modifications and suggestions, if any, made by the Board on the draft prospectus or the Letter of Offer as the case may be, with respect to information to be given to the investors are incorporated therein.

17 Inserted by the Securities and Exchange Board of India (Merchant Bankers) Amendment Regulations, 1997 w.e.f 9th December 1997 vide S.O.837 (E), read with Corrigendum vide S.O.869 (E) dated 15th December 1997.

Payment of fees to the Board

24A. The draft prospectus or draft letter of offer referred to in regulation 24 shall be submitted along with such fees and in such manner as may be specified in Schedule IV.

Continuance of association of lead manager with an issue

25. The lead manager undertaking the responsibility for refunds or allotment of securities in respect of any issue shall continue to be associated with the issue till the subscribers have received the share or debenture certificates or refund of excess application money; Provided that where a person other than the lead manager is entrusted with the refund or allotment of securities in respect of any issue, the lead manager shall continue to be responsible for ensuring that such other person discharges the requisite responsibilities in accordance with the provisions of the Companies Act and the listing agreement entered into by the body corporate with the stock-exchange.

Acquisition of shares prohibited

26. No Merchant Banker or any of its directors, partner or manager or principal officer shall either on their respective accounts or through their associates or relatives enter into any transaction in securities of bodies corporate on the basis of unpublished price sensitive information obtained by them during the course of any professional assignment either from the clients or otherwise.

Information to the Board

27. Every Merchant Banker shall submit to the Board complete particulars of any transaction for acquisition of securities of any body corporate whose issue is being managed by that Merchant Banker within fifteen days from the date of entering into such transaction.

Disclosures to the Board

28. A Merchant Banker shall disclose to the Board as and when required, the following information, namely: - (i) his responsibilities with regard to the management of the issue; (ii) any change in the information or particulars previously furnished, which have a bearing on the certificate granted to it; (iii) the names of the body corporate whose issues he has managed or has been associated with; (iv) the particulars relating to breach of the capital adequacy requirement as specified in regulation 7; (v) relating to his activities as a manager, underwriter, consultant or adviser to an issue as the case may be.
CHAPTER IV
PROCEDURE FOR INSPECTION

Board's right to inspect
29. (1) The Board may appoint one or more persons as inspecting authority to undertake inspection of the books of accounts, records and documents of the Merchant Banker for any of the purposes specified in sub-regulation (2)

(2) The purposes referred to in sub-regulation (1) may be as follows namely: - to ensure that the books of account are being maintained in the manner required; that the provisions of the Act, rules, regulations are being complied with; to investigate into the complaints received from investors, other Merchant Bankers or any other person on any matter having a bearing on the activities of the Merchant Banker; and to investigate suo-moto in the interest of securities business or investors interest into the affairs of the Merchant Banker.

Notice before inspection
30 (1) Before undertaking an inspection under Regulation 29 the Board shall give a reasonable notice to the Merchant Banker for that purpose. (2) Notwithstanding anything contained in sub-regulation (1), where the Board is satisfied that in the interest of the investors no such notice should be given, it may by an order in writing direct that the inspection of the affairs of the Merchant Banker be taken up without such notice. (3) During the course of inspection, the Merchant Banker against whom an inspection is being carried out shall be bound to discharge his obligations as provided under Regulation 31.

Obligations of Merchant Banker on inspection by the Board
31. (1) It shall be the duty of every director, proprietor, partner, officer and employee of the Merchant Banker, who is being inspected, to produce to the Inspecting authority such books, accounts and other documents in his custody or control and furnish him with the statements and information relating to his activities as a Merchant Banker within such time as the inspecting authority may require.

(2) The Merchant Banker shall allow the inspecting authority to have reasonable access to the premises occupied by such Merchant Banker or by any other person on his behalf and also extend reasonable facility for examining any books, records, documents and computer data in the possession of the Merchant Banker or any such other person and also provide copies of documents or other materials which, in the opinion of the inspecting authority are relevant for the purposes of the inspection. (3) The inspecting authority, in the course of inspection, shall be entitled to examine or record statements of any principal officer, director, partner, proprietor and employee of the Merchant Banker. (4) It shall be the duty of every director; proprietor, partner, officer or employee of the Merchant Banker to give to the inspecting authority all assistance in connection with the inspection which the Merchant Banker may reasonably be expected to give.

Submission of Report to the Board
32. The inspecting authority shall, as soon as may be possible submit, an inspection report to the Board.

Communication of findings etc, to the Merchant Banker
33. (1) The Board shall after consideration of the inspection report communicate the findings to the Merchant Banker to give him an opportunity of being heard before any action is taken by the Board on the findings of the inspecting authority.

(2) On receipt of the explanation if any, from the Merchant Banker, the Board may call upon the Merchant Banker to take such measures as the Board may deem fit in the interest of the securities market and for due compliance with the provisions of the Act, rules and regulations.

Appointment of Auditor
34. The Board may appoint a qualified auditor to investigate into the books of account or the affairs of the Merchant Banker: Provided that the auditor so appointed shall have the same powers of the inspecting authority as are mentioned in Regulation 29 and the obligations of the Merchant Banker in Regulation 31 shall be applicable to the investigation under this regulation.

Explanation:
For the purposes of this regulation the expression "qualified auditor" shall have the same meaning as given in Section 226 of the Companies Act, 1956 (1 of 1956).
CHAPTER V
PROCEDURE FOR ACTION IN CASE OF DEFAULT

Liability for action in case of default
35. (1) A Merchant Banker who—
(a) fails to comply with any conditions subject to which certificate has been granted;
(b) contravenes any of the provisions of the Act, rules or regulations; shall be liable to any of the penalties specified in
sub-regulation (2).
(2) The penalties referred to in sub-regulation (1) may be either—suspension of registration; or
cancellation of registration.

Suspension of registration
36. (1) A penalty of suspension of registration of a Merchant Banker may be imposed where—
(i) the Merchant Banker violates the provisions of the Act, rules or regulations;
(ii) the Merchant Banker—
(a) fails to furnish any information relating to his activity as Merchant Banker as required by the Board; (b)
furnishes wrong or false information;
(c) does not submit periodical returns as required by the Board;
(d) does not co-operate in any enquiry conducted by the Board;
(iii) the Merchant Banker fails to resolve the complaints of the investors or fails to give a satisfactory reply to the
Board in this behalf;
(iv) the Merchant Banker indulges in manipulating or price rigging or cornering activities;
(v) the Merchant Banker is guilty of misconduct or improper or unbusiness like or unprofessional conduct which is
not in accordance with the Code of Conduct specified in Schedule III;
(vi) the Merchant Banker fails to maintain the capital adequacy requirement in accordance with the provisions of
Regulation 7;
(vii) the Merchant Banker fails to pay the fees;
(viii) the Merchant Banker violates the conditions of registration;
(ix) the Merchant Banker does not carry out his obligations as specified in the regulation.

Cancellation of registration
37. A penalty of cancellation of registration of a Merchant Banker may be imposed where—
(i) the Merchant Banker indulges in deliberate manipulation or price rigging or cornering activities affecting the
securities market and the investors interest;
(ii) the financial position of the Merchant Banker deteriorates to such an extent that the Board is of the opinion that
his continuance as Merchant Banker is not in the interest of investors;
(iii) the Merchant Banker is guilty of fraud, or is convicted of a criminal offence;
(iv) in case of repeated defaults of the nature mentioned in Regulation 36 provided that the Board furnishes
reasons for cancellation in writing.

Manner of making order of suspension an cancellation
38. No order of penalty of suspension or cancellation as the case may be, shall be imposed except after holding an
enquiry in accordance with the procedure specified in Regulation 39.

Manner of holding enquiry before suspension or cancellation
39. (1) For the purpose of holding an enquiry under Regulation 38, the Board may appoint an enquiry officer.
(2) The enquiry officer shall issue to the Merchant Banker a notice at the registered office or the principal place of
business of the Merchant Banker.
(3) The Merchant Banker may, within thirty days from the date of receipt of such notice, furnish to the enquiry officer a
reply together with copies of documentary or other evidence relied on by him or sought by the Board from the Merchant
Banker.
(4) The enquiry officer shall, give a reasonable opportunity of hearing to the Merchant Banker to enable him to make
submissions in support of his reply made under sub-regulation (3).
(5) Before the enquiry officer, the Merchant Banker may either appear in person or through any person duly authorized
by the Merchant Banker:
Provided that no lawyer or advocate shall be permitted to represent the Merchant Banker at the enquiry: Provided
further that where a lawyer or an advocate has been appointed by the Board as a presenting officer under sub-
regulation (6), it shall be lawful for the Merchant Banker to present its case through a lawyer or advocate.
(6) If it is considered necessary, the enquiry officer may ask the Board to appoint a presenting officer to present its
case. (7) The enquiry officer shall, after taking into account all relevant facts and submissions made by the Merchant
Banker, submit a report to the Board and recommend the penalty to be imposed as also the grounds on the basis of which the proposed penalty is justified.

**Show-cause notice and order**

40. (1) On receipt of the report from the enquiry officer, the Board shall consider the same and issue a show-cause notice as to why the penalty as proposed by the enquiry officer should not be imposed.

(2) The Merchant Banker shall within twenty-one days of the date of the receipt of the show-cause send a reply to the Board.

(3) The Board after considering the reply to the show-cause notice, if received, shall as soon as possible but not later than thirty days from the receipt of the reply, if any, pass such order as it deems fit.

(4) Every order passed under sub-regulation (3) shall be self-contained and give reasons for the conclusions stated therein including justification of the penalty imposed by that order.

(5) The Board shall send a copy of the order under sub-regulation (3) to the Merchant Banker.

**Effect of suspension and cancellation of registration of Merchant Banker**

41. (1) On and from the date of the suspension of the Merchant Banker he shall cease to carry on any activity as a Merchant Banker during the period of suspension.

(2) On and from the date of cancellation the Merchant Banker shall with immediate effect cease to carry on any activity as a Merchant Banker.

**Publication of order of suspension**

42. The order of suspension or cancellation of certificate passed under sub-regulation (3) of regulation 40 shall be published in at least two daily newspapers by the Board.

**Appeal to the Central Government**

43. Any person aggrieved by an order of the Board may prefer an appeal to the Central Government.

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**SCHEDULE II**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**(MERCHANT BANKERS) REGULATIONS, 1992**

**(Regulation 12)**

**FEES**

22[ * 1. Every Merchant Banker shall pay a sum of Rupees five lacs as registration fees at the time of grant of certificate by the Board.

2. A Merchant Banker to keep registration in force shall pay renewal fee of Rs 2.5 lacs every three years from the fourth year from the date of initial registration.

3. (a) The fee referred to in paragraph 1 shall be paid by the Merchant Banker within fifteen days from the date of receipt of the intimation from the Board under sub-regulation (1) of Regulation 8.

(b) The fee referred to in paragraph 2, shall be paid by the Merchant Banker within fifteen days from the date of receipt of intimation from the Board under sub-regulation (3) of Regulation 9.

4. The fees specified in paragraphs 1 and 2, shall be payable by Merchant Banker by a demand draft in favour of 'Securities and Exchange Board of India' payable at Mumbai or at the respective regional office.]

22Substituted by the Securities and Exchange Board of India (Merchant Bankers) Amendment Regulations, 1999 for the existing paragraphs (1), (2), (3) and (4) w.e.f. September 30, 1999 vide S.O.799 (E)

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**SCHEDULE III**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**(MERCHANT BANKERS) REGULATIONS, 1992**

**(Regulation 13)**

**CODE OF CONDUCT FOR MERCHANT BANKERS**

A Merchant Banker in the conduct of his business shall observe high standards of integrity and fairness in all his dealings with his clients and other Merchant Bankers. A Merchant Banker shall render at all times high standards of service, exercise due diligence, ensure proper care and Exercise independent professional judgement. He shall wherever necessary, disclose to the clients, possible sources of conflict of duties and interests, while providing unbiased services.

A Merchant Banker shall not make any statement or become privy to any act, practice or unfair competition, which is likely to be harmful to the interests of other Merchant Bankers or is likely to place such other Merchant
Bankers in a disadvantageous position in relation to the Merchant Banker, while competing for or executing any assignment. A Merchant Banker shall not make any exaggerated statement, whether oral or written, to the client either about the qualification or the capability to render certain services or his achievements in regard to services rendered to other clients.

A Merchant Banker shall always endeavor to render the best possible advice to the clients having regard to the clients' needs and the environments and his own professional skill; and ensure that all professional dealings are effected in a prompt, efficient and cost effective manner.

A Merchant Banker shall not divulge to other clients, press or any other party any confidential information about his client, which has come to his knowledge; and deal in securities of any client company without making disclosure to the Board as required under the regulations and also to the Board of Directors of the client company.

A Merchant Banker shall endeavor to ensure that the investors are provided with true and adequate information without making any misguiding or exaggerated claims and are made aware of attendant risks before any investment decision is taken by them; copies of prospectus, memorandum and related literature are made available to the investors; adequate steps are taken for fair allotment of securities and refund of application money without delay; and complaints from investors are adequately dealt with.

The Merchant Bankers shall not generally and particularly in respect of issue of any securities be party to creation of false market; price rigging or manipulation; passing of price sensitive information to brokers, members of the stock exchanges and other players in the capital market or take any other action which is unethical or unfair to the investors.

A Merchant Banker shall abide by the provisions of the Act; rules and regulations and which may be applicable and relevant to the activities carried on by the Merchant Banker.

F. NO. 20/15/SE/92

G.V. RAMAKRISHNA
CHAIRMAN
SECURITIES AND EXCHANGE BOARD OF INDIA

SCHEDULE IV SECURITIES AND EXCHANGE BOARD OF INDIA (MERCHANT BANKERS) AMENDMENT REGULATIONS, 1996 (See regulation 24A) 1. Every Merchant Banker shall pay fees as set out below: Size of the issue including premium and intended retention of oversubscription (Rs.) Proposed Fee per document (Rs.) Upto 5 crores 10,000 More than 5 crores and upto 10 crores15,000 More than 10 crores and upto 50 crores25,000 More than 50 crores and upto 100 crores50,000 More than 100 crores and upto 500 crores2,50,000 More than 500 crores5,00,000 2. Fees referred to in clause (1) above shall be paid in the following manner: The fees shall be paid along with the draft of the offer document submitted to the Board under regulation 24. The fees shall be payable by a draft in favour of 'Securities and Exchange Board of India' at Mumbai or at the respective regional offices where the draft offer document under regulation 24 is submitted.

23Added by Securities and Exchange Board of India (Merchant Bankers) Amendment Regulations, 1996, w.e.f June 6, 1996 vide S.O. NO. 396 (E)
ANNEXURE – III.2

MEMORANDUM OF UNDERSTANDING BETWEEN THE LED MERCHANT BANKER TO THE ISSUE AND THE ISSUER COMPANY

THIS MEMORANDUM OF UNDERSTANDING MADE BETWEEN ...... (name of the issuing company), A COMPANY WITHIN THE MEANING OF THE COMPANIES ACT, 1956 AND HAVING ITS REGISTERED OFFICE AT ......... (registered office address of the issuing company) (HEREINAFTER REFERRED TO AS "the Company") AND ......... a Company registered under the Companies Act 1956, and having its registered office at............... with the branch office at (hereinafter referred to as the "Lead Merchant Banker").

WHEREAS:

1. The Company is taking steps for issue of .................. (particulars of the issue) to the public / existing shareholders of the Company; the said issue of shares/debentures is hereinafter referred to as "the issue"; AND

2. The company has approached the Lead Merchant Banker to manage the issue and the Lead Merchant Banker has accepted the engagement inter-alia subject to the company entering into memorandum of understanding for the purpose being these presents;
ANNEXURE – III.3

FORMAT OF DUE DILIGENCE CERTIFICATE TO BE GIVEN 
BY LEAD MERCHANT BANKER (S) ALONGWITH DRAFT 
OFFER DOCUMENT

To,

SECURITIES AND EXCHANGE BOARD OF INDIA

Dear Sirs,

SUB.: ISSUE OF _______________ BY _______________ LTD.

We, the under noted Lead Merchant Banker (s) to the above mentioned forthcoming issue state as follows:

(1) We have examined various documents including those relating to litigation like commercial disputes, patent disputes, disputes with collaborators etc. and other materials more particularly referred to in the Annexure hereto in connection with the finalization of the draft prospectus/letter of offer pertaining to the said issue;

(2) On the basis of such examination and the discussions with the company, its directors and other officers, other agencies, independent verification of the statements concerning the objects of the issue, projected profitability, price justification and the contents of the documents mentioned in the Annexure and other papers furnished by the company, WE CONFIRM that:

(a) the draft prospectus/letter of offer forwarded to the Board is in conformity with the documents, materials and papers relevant to the issue;

(b) all the legal requirements connected with the said issue as also the guidelines, instructions, etc. issued by the Board, the Government and any other competent authority in this behalf have been duly complied with; and

(c) the disclosures made in the draft prospectus / letter of offer are true, fair and adequate to enable the investors to make a well informed decision as to the investment in the proposed issue.

(3) We confirm that besides ourselves, all the intermediaries named in the prospectus/letter of offer are registered with the Board and that till date such registration is valid.
(4) We have satisfied ourselves about the worth of the underwriters to fulfil their underwriting commitments.

(5) We certify that written consent from shareholders has been obtained for inclusion of their securities as part of promoters' contribution subject to lock-in and the securities proposed to form part of promoters' contribution subject to lock-in, will not be disposed / sold / transferred by the promoters during the period starting from the date of filing the draft prospectus with the Board till the date of commencement of lock-in period as stated in the draft prospectus.

PLACE:  
ISSUE DATE:  
LEAD MERCHANT BANKER (S) TO THE  
WITH HIS/ THEIR SEAL (S)
To,

Securities and Exchange Board of India
Mumbai/Chennai/New Delhi/Calcutta

Dear Sir(s),

Sub: Public issue of ______ shares of ______ etc. (Details of the issue)

This is to certify that the offer document filed with Registrar of companies on ______ was suitably updated under intimation to the Board and that the said offer document contains all the material disclosures in respect of the issuer company as on the said date.

We confirm that the registrations of all the Intermediaries named in the offer document are valid as on date and that none of these intermediaries have been debarred from functioning by any regulatory authority.

We confirm that written consent from shareholders has been obtained for inclusion of their securities as part of promoters' contribution subject to lock-in.

We further confirm that the securities proposed to form part of promoters' contribution and subject to lock-in, have not been disposed / sold / transferred by the promoters during the period starting from the date of filing the draft prospectus with SEBI till date.

Yours faithfully,
ANNEXURE – III.5

FORMAT FOR DUE DILIGENCE CERTIFICATE AT THE TIME OF OPENING OF THE ISSUE.

To,

Securities and Exchange Board of India
Mumbai/Chennai/New Delhi/Calcutta

Dear Sir(s),

Sub: Public issue of ______ shares of ______ etc. (Details of the issue)

This is to certify that all the material disclosures in respect of the issuer company as on the date of opening of the issue have been made through the offer document filed with ROC on _____ and subsequent amendments/ advertisements (if applicable) dated ______.

We confirm:

a) that the registrations of all the Intermediaries named in the offer document are valid as on date and that none of these intermediaries have been debarred from functioning by any regulatory authority as on date.

b) that written consent from shareholders has been obtained for inclusion of their securities as part of promoters' contribution subject to lock-in

c) that the securities proposed to form part of promoters' contribution and subject to lock-in, have not been disposed / sold / transferred by the promoters during the period starting from the date of filing the draft prospectus with SEBI till date.

d) that the abridged prospectus contains all the disclosures as specified in the SEBI guidelines for Disclosure and Investor Protection.

Yours faithfully,
ANNEXURE – III.6

FORMAT FOR DUE DILIGENCE CERTIFICATE AFTER THE ISSUE HAS OPENED BUT BEFORE IT CLOSES FOR SUBSCRIPTION.

To,

Securities and Exchange Board of India
Mumbai/Chennai/New Delhi/Calcutta

Dear Sir(s),

Sub: Public issue of ______ shares of ______ etc. (Details of the issue)

This is to certify that all the material disclosures in respect of the issuer company as on date have been made through the offer document filed with ROC on _____ and subsequent amendments/advertisements (if applicable) dated _____.

We confirm that the registrations of all the Intermediaries named in the offer document are valid as on date and that none of these intermediaries have been debarred from functioning by any regulatory authority as on date.

We also confirm that the securities proposed to form part of promoters’ contribution and subject to lock-in, have not been disposed/sold/ transferred by the promoters during the period starting from the date of filing the draft prospectus with SEBI till date.

Yours faithfully,