

CHAPTER III
PROSPECTUS AND ALLOTMENT OF SECURITIES

Part I

Public Offer

Matters to be stated in the prospectus

3.1. For the purposes of clause (a) of sub-section (1) of section 26,

(1) pursuant to sub-clause (i), the names, addresses and contact details of ***

(2) pursuant to sub-clause (ii),

(a) dates of opening and closing of the issue shall be prominently disclosed

(b) a declaration shall be made by the Board or the Committee authorized thereof in the prospectus that the allotment letters shall be issued or application money shall be refunded within ***

(3) pursuant to sub-clause (iii),

(a) a statement shall be given by the Board of directors that all monies received out of the issue shall be transferred to a separate bank account maintained with a Scheduled Bank; and

(b) details of all utilized and unutilized monies out of the monies collected in the previous issue made by way of public offer shall be disclosed and continued to be disclosed in the balance sheet and till the time any part of the proceeds of such previous issue remains unutilized indicating the purpose for which such monies have been utilized, and the securities or other forms of financial assets in which such unutilized monies have been invested;

(4) pursuant to sub-clause (iv), following details of underwriting shall be disclosed in the prospectus ***

(5) pursuant to sub-clause (v), consent of such other persons namely ***

(6) pursuant to sub-clause (viii), the capital structure of the company and its evolution shall be presented in the following manner- *** But in any case, in addition to such disclosures, disclose the number and rates at which each of the allotments were made in the last two years prior to public offer separately indicating the allotments made for considerations other than case and the details of such considerations in each case;

(7) Pursuant to sub-clause (ix), such other particulars such as ***

(8) Pursuant to item (E) of sub-clause (xi), the information about (i) litigation outstanding against any promoter of the issuer on the date of issue of the prospectus, and (ii) any direction issued by any Government Ministry or Department, or statutory authority or body during last five years immediately preceding the year of issue of the prospectus against any promoter of the issuer, shall be disclosed in the following manner***

(9) Pursuant to sub-clause (xiii), details of directors including their appointments and remuneration, and such particulars of the nature and extent of their interests in the company shall be disclosed in the following manner ***

(10) Pursuant to sub-clause (xiv), the sources of promoters contribution shall be disclosed in the following manner ***

(11) Pursuant to sub-clause (xiv), the sources of promoters contribution shall be disclosed in the following manner *** It shall be specified if such sources include proceeds out of the sale of shares of the company and shares of its subsidiary companies previously held by each of the promoters. The disclosure for sources of promoters contribution shall also include the particulars of name, address and the amount so raised as loan, assistance etc , if any, by promoters for making such contributions and in case of own sources, complete details thereof.

(12) Related party transactions entered during last five years immediately preceding the year of issue of prospectus as well as transactions proposed to be entered with related parties in coming future years.

(13) Summary of qualifications/adverse remarks/suggestions of auditors in the last five years immediately preceding the year of issue of prospectus and on their impact on the financial statements and financial position of the company and the corrective steps taken and proposed to be taken by the company for each of the said qualifications/adverse remarks/suggestions

(14) Details of any inquiry, inspections or investigations initiated or conducted under the Companies Act or previous companies Act in the Last five years in the case of company or all of its subsidiaries .Also if there were any prosecutions filed, pending, fines imposed, compounding of offences in the last 5 years and if so section wise details thereof for the company and all of its subsidiaries.

(15) Details of any acts of frauds against the company and if so, the action taken by the company.

3.2. For the purposes of clause (b) of sub-section (1) of section 26,

(1) Pursuant to sub-clause (i), reports by the auditors with respect to profits and losses and assets and liabilities shall also include the rates of dividends, if any, paid by the issuer in respect of each class of shares for each of the five financial years immediately preceding the year of issue of the prospectus, giving particulars of each class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares for any of those years; and

if no accounts have been made up in respect of any part of the period of five years ending on a date three months before the issue of the prospectus, a statement of that fact accompanied by a statement of the accounts of the issuer in respect of that part of the said period up to a date not earlier than six months of the date of issue of the prospectus indicating the profit or loss for that period and assets and liabilities position as at the end of that period together with a certificate that such accounts have been examined and found correct. The said statement may indicate the nature of provision or adjustments made or which are yet to be made.

(2) Pursuant to sub-clause (ii) and its proviso, reports relating to profits and losses for each of the five financial years or where five financial years have not expired, for each of the financial year immediately preceding the financial year of the issue of the prospectus shall:

(a) if the company has no subsidiaries, so far as regards its profits and losses, deal separately with the profits or losses of the company (distinguishing items of a non-recurring nature) for each of the five financial years immediately preceding the year of the issue of the prospectus; and

(b) if the company has subsidiaries, deal either -

- (i) as a whole with the combined profits or losses of its subsidiaries, so far as they concern members of company; or
- (ii) individually with the profits or losses of each subsidiary, so far as they concern members of the company; or
- (iii) instead of dealing separately with the company's profits or losses, deal as a whole with the profits or losses of the company, and, so far as they concern members of the company, with the combined profits or losses of its subsidiaries; and

(c) The mode adopted at b above should be specified in the prospectus

(3) For the purposes of sub-clause (iii) and proviso thereof, reports made by the auditors in respect of the business of the company shall be stated in the prospectus in the manner provided in sub-rule(2).

3.3. For the purposes of clause (d) of sub-section (1) of section 26, the prospectus shall include the following matters and reports:

(1) If the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly –

(a) in the purchase of any business; or

(b) in the purchase of an interest in any business and by reason of that purchase, or anything to be done in consequence thereof, or in connection therewith; the company will become entitled to an interest as respects either the capital or profits and losses or both, in such business exceeding fifty per cent, thereof; a report made by chartered accountants (who shall be named in the prospectus) upon:

- (i) the profits or losses of the business for each of the five financial years immediately preceding the date of the issue of the prospectus ; and
- (ii) the assets and liabilities of the business as on the last date to which the accounts of the business were made up, being a date not more than one hundred and twenty days before the date of the issue of the prospectus;

regarding the proceeds or any parts of proceeds of the issue in the purchase of any business or interest in business.

(c) In case of purchase or acquisition of any property including indirect acquisition of property for which advances have been paid to even third parties, the following disclosures shall be made-

- (i) the names, addresses, descriptions and occupations of the vendors;
- (ii) the amount paid or payable in cash, to the vendor and, where there is more than one separate vendor, or the company is a sub-purchaser, the amount so paid or payable to each vendor, specifying separately the amount, if any, paid or payable for goodwill;
- (iii) the nature of the title or interest in such property proposed to be acquired by the company;
- (iv) short particulars of every transaction relating to the property completed within the two preceding years, in which any vendor of the property to the company or any person who is, or was at the time of the transaction, a promoter, or a director or proposed

director of the company had any interest, direct or indirect, specifying the date of transaction and the name of such promoter, director or proposed director and stating the amount payable by or to such vendor, promoter, director or proposed director in respect of the transaction.

(2)(a) If -

(i) the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in any manner resulting in the acquisition by the company of shares in any other body corporate; and

(ii) by reason of that acquisition or anything to be done in consequence thereof or in connection therewith, that body corporate will become a subsidiary of the company;

a report shall be made by Chartered Accountants (who shall be named in the prospectus) upon:

(A) the profits or losses of the other body corporate for each of the five financial years immediately preceding the issue of the prospectus; and

(B) the assets and liabilities of the other body corporate as on the last date to which its accounts were made up.

(b) The said report shall:

(i) indicate how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the issuer and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with for holders of other shares, if the issuer had at all material times held the shares to be acquired; and

(ii) where the other body corporate has subsidiaries, deal with the profits or losses and the assets and liabilities of the body corporate and its subsidiaries in the manner as prescribed in sub-clause (2) above.

(3) Principal terms of loan and assets charged as security: Brief terms and conditions of the term loans including re-scheduling, prepayment, penalty, default, etc. In case of initial public offer, follow-on public offer, rights issue of any securities which are governed by the SEBI, following information shall be required to be disclosed in addition to the information as prescribed under these rules ***

(4) The aggregate number of specified securities purchased or sold by the promoter group and/or by the directors of the company which is a promoter of the issuer and/or by the directors of the issuer and their relatives (as defined in sub-section (69) of section 2) within six months immediately preceding the date of filing prospectus with the Registrar of Companies shall be disclosed.

(5) A fact sheet in the following format shall be included at the beginning of the prospectus ***

Variation in terms of contracts referred to in the prospectus or objects for which prospectus was issued

3.4. (1) For the purposes of sub-section (1) of section 27, where the company has raised money from public through prospectus and still has any unutilized amount out of the money so raised, it shall not vary the terms of contracts referred to in the prospectus or objects for which prospectus was issued except by passing a special resolution and the notice of the proposed special resolution shall contain the following particulars:-

- (a) Original purpose/ object of the Issue;
- (b) total money raised;
- (c) money utilized for the said object of the company;
- (d) Percentage of proposed objects achieved;
- (e) unutilized amount out of the money so raised through prospectus,
- (f) particulars of the proposed variation in the terms of contracts referred to in the prospectus or objects for which prospectus was issued;
- (g) Reason for seeking variation and justification for such variation;
- (h) estimated financial impact of the proposed variation on the earnings and cash flow of the company;
- (i) Proposed time limit within which the proposed varied objects would be achieved
- (j) Clause wise details as specified in rule 3.1(7) as was required with respect to the originally proposed objects of the issue
- (k) Opportunity cost of financial loss to shareholders due to loss in time value of money vis a vis the original objects
- (l) Risk factors pertaining to the new Objects
- (m) other relevant information which is necessary for the members to take an informed decision on the proposed resolution;

(2) For the purposes of first proviso to sub-section (1) of section 27, the advertisement giving details of notice in respect of resolution for varying the terms of any contract referred to in the prospectus or altering the objects for which the prospectus was issued, shall be in Form No. 3.1. Such advertisement shall be published simultaneously with dispatch of Postal Ballot Notices to Shareholders.

(3) The notice shall also be placed on the web-site of the company, if any.

(4) Such variation to the proposed objects to the issue may be made not more than one time with respect to money raised in any particular public issue offer.

Offer of Sale by Members

3.5. (1) The provisions of Part I of Chapter III and rules made there under shall be applicable to offer of sale referred to in section 28 except the following-

- (a) provisions relating to minimum subscription;
- (b) provisions for minimum application value;
- (c) provisions requiring any statement to be made by the Board of directors in respect of the utilization of money; and
- (d) any other provision, information about which cannot be gathered by the offeror, with detailed justifications thereof, of not complying with such provisions

(2) In the case of offer for sale, the dividend for the entire year shall be payable to the transferees.

(3) The prospectus issued under section 28 shall disclose the name of the entity bearing the cost of making the offer for sale along with reasons.

Dematerialisation of securities

3.6. (a) For the purposes of section 29, the entire holding of the promoters of every public company making a public offer of any security shall be held only in dematerialised form:

Provided that the entire holding of the promoters in the securities of the company held in physical form up to the initial public offer shall be converted in dematerialized form before such issue and thereafter such promoter shareholding shall only be held in dematerialized form.

(b) Any issue of securities by a listed company should be made only in dematerialised form.

Shelf prospectus

3.7. For the purposes of sub-section (2) of section 31, the information memorandum shall be prepared in Form No. 3.2 and filed with the Registrar along with the fee as provided in Annexure B within one month prior to the issue of a second or subsequent offer of securities under the shelf prospectus.

Refund of Application Money

3.8. (1) For the purposes of sub-section (3) of section 39, if the stated minimum amount has not been subscribed and the sum payable on application is not received within the period specified therein, then the application money shall forthwith be repaid within a period of *** if any such money is not so repaid within such specified period, the directors of the company shall jointly and severally be liable to repay that money with interest at the rate of ***

(2) The application money to be refunded shall, either by way of cheque/ demand draft or any other banking channels, be credited only to the bank account of the subscriber.

Return of Allotment

3.9. For the purposes of sub-section (4) of section 39,

(i) Whenever a company having a share capital makes any allotment of its securities, the company shall, within thirty days thereafter, file with the Registrar a return of allotment in Form No.3.3, along with the fee as specified in Annexure B

(ii) There shall be attached to the Form No.3.3 a list of allottees stating their names, address, occupation, if any, and number of securities allotted to each of the allottees. The list shall be certified by the signatory of the Form No. 3.3 to be complete and correct as per the records of the company.

(iii) In the case of securities (not being bonus shares) allotted as fully or partly paid up for consideration other than cash, there shall be attached to the Form No.3.3 the contract, being duly stamped, in writing constituting the title of the allottee to the allotment together with any contract of sale, or a contract for services or other consideration in respect of which that allotment was made.

(iv) Where a contract such as is mentioned in sub-rule (iii) is not reduced to writing, the company shall attach to the Form No.3.3 complete particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing and those particulars shall be deemed to be an instrument within the meaning of the Indian Stamp

Act, 1899 (2 of 1899), and the Registrar may, as a condition of filing the particulars, require that the stamp duty payable thereon be adjudicated under section 31 of the Indian Stamp Act, 1899.

(v) A report of a registered valuer in respect of valuation of the consideration other than cash shall also be attached along with the contract as mentioned in sub-rule (iii) and (iv).

(vi) In the case of issue of bonus shares, a copy of the resolution authorizing the issue of such shares shall be attached to the Form No. 3.3.

(vii) In case the shares have been issued in pursuance of clause (c) of sub-section (1) of section 62, there shall be attached to Form No.3.3, the valuation report of the registered valuer.

Payment of commission

3.10. For the purposes of sub-section (6) of section 40, a company may pay commission to any person in connection with the subscription or with the procurement of subscription to its securities, whether absolute or conditional, subject to the following conditions:

(a) the payment of such commission should be authorized in the company's articles of association;

(b) the commission may be paid out of proceeds of the issue or profit or both;

(c) the rate of commission paid or agreed to be paid shall not exceed, in case of shares,*** percentage of the price at which the shares are issued or rate authorized by articles whichever is less and in case of debentures, shall not exceed two and a half per cent of the price at which the debentures are issued, or as specified in the company's articles, whichever is less.

(d) the prospectus of the company shall disclose the following:

(i) name of the underwriters;

(ii) the rate and amount of the commission payable to the underwriter; and

(iii) the number of the shares or debentures which is to be subscribed by the underwriter absolutely or conditionally.

(e) No commission shall be paid to any underwriter on shares or debentures which are not offered to the public for subscription.

(f) a copy of the contract for the payment of the commission is delivered to the Registrar at the time of delivery of the prospectus for registration.

Global Depository Receipts

3.11. (1) For the purposes of section 41, following rules shall apply to the issuance of Global Depository Receipts

Definitions – For the purposes of rule 3.11, unless the context otherwise requires, ___

(i) "Scheme" means the Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 or any modification or re-enactment thereof;

(ii) Words and expressions occurring in these rules shall bear the same meaning as in the Act and the Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 or any modification or re-enactment thereof.

(2) Eligibility to issue depository receipts

- (a) A company may issue depository receipts provided it is eligible to do so in terms of the Scheme and relevant provisions of Foreign Exchange Management Rules and Regulations.
- (b) The authorized share capital of the company shall be sufficient for the company to issue new shares underlying depository receipts at the time of conversion of such receipts.

(3) Conditions for issue of depository receipts

- (a) The Board of Directors of the company intending to issue depository receipts shall pass a resolution authorizing the company to do so.
- (b) The company shall take prior approval of its shareholders by a special resolution to be passed at a general meeting or by postal ballot.
- (c) Depository receipts shall be issued by an overseas depository bank appointed by the company and the underlying shares shall be kept in the custody of a domestic custodian bank.
- (d) The company shall ensure that all the applicable provisions of the Scheme and the rules or regulations or guidelines issued by the Reserve Bank of India are complied with before and after the issue of depository receipts.
- (e) The company shall appoint a merchant banker or a practicing chartered accountant or a practicing cost accountant or a practicing company secretary to oversee all the compliances relating to issue of depository receipts and the compliance report taken from such merchant banker or practicing chartered accountant or practicing cost accountant or practicing company secretary, as the case may be, shall be placed at the meeting of the Board of Directors of the company to be held immediately after closure of all formalities of the issue of depository receipts.

(4) Manner and form of depository receipts

- (a) Depository receipts can be issued by way of public offering or private placement or in any other manner prevalent abroad and may be listed or traded in an overseas listing or trading platform.
- (b) The depository receipts may be issued against issue of new shares or may be sponsored against shares held by shareholders of the company in accordance with such conditions as the Government and / or Reserve Bank of India may specify from time to time.
- (c) The underlying shares shall be allotted in the name of the overseas depository bank and against such shares, the depository receipts shall be issued by the overseas depository bank abroad.

(5) Voting rights

- (a) A holder of depository receipts may become a member of the company and shall be entitled to vote as such only on conversion of the depository receipts into underlying shares after following the procedure provided in the Scheme and the provisions of this Act.
- (b) Until the conversion of depository receipts, the overseas depository shall be entitled to vote on behalf of the holders of depository receipts in accordance with the provisions of the

agreement entered into between the depository, holders of depository receipts and the company in this regard.

(6) Proceeds of issue

The proceeds of issues shall either be brought back to India or deposited in an Indian Bank operating abroad or any foreign bank of repute having operations in India with an agreement that the foreign bank having operations in India shall take responsibilities for furnishing all the information which may be required.

(7) Non applicability of certain provisions of the Act

(1) The provisions of the Act and any rules issued thereunder insofar as they relate to public issue of shares or debentures shall not apply to issue of depository receipts abroad.

(2) The offer document, by whatever name called and if prepared for the issue of depository receipts, shall not be a prospectus or an offer document within the meaning of this Act and all the provisions as applicable to a prospectus or an offer document shall have no application to a depository receipts offer document.

(3) Notwithstanding anything contained under section 88 of the Act, until the redemption of depository receipts, the name of the overseas depository bank shall be entered in the Register of Members of the company.

Part II– Private Placement

3.12. (1) (a) For the purposes of sub-section (1) of section 42, a company may make an offer or invitation of securities through issue of a private placement offer letter in Form No. 3.4.

(b) A private placement offer letter shall be accompanied by an application form addressed specifically to the person to whom the offer is made and shall be sent to him, either in writing or in electronic mode, within thirty days of recording the names of such persons in accordance with sub-section (7) of section 42:

Provided that no person other than the person so addressed in the application form shall be allowed to apply through such application form and any application not so received shall be treated as invalid.

(2) For the purposes of sub-section (2) of section 42, a company shall not make private placement unless:

(a) the proposed offer of securities or invitation to subscribe securities has been approved by the shareholders of the Company, by way of a Special Resolution, for each of the Offers/Invitations;

(b) such offer or invitation shall be made to not more than two hundred persons in the aggregate in a financial year, excluding the qualified institutional buyers and employees of the company being offered securities under a scheme of employees stock option as per provisions of clause (b) of sub-section (1) of section 62;

Provided that any allottee under such offer/invitation shall not transfer his/its securities to more than 20 persons during a quarter and the company shall not register any transfer which is not in conformity with this requirement.

(c) the number of such offers or invitations shall not exceed four in a financial year and not more than once in a calendar quarter with a minimum gap of sixty days between any two such offers or invitations; and

(d) the value of such offer or invitation shall be with an investment size of not less than fifty thousand rupees per person.

(e) the payment to be made on subscription of securities shall be made from the bank account of the person subscribing to such securities:

Provided that monies payable on subscription to securities to be held by joint holders shall be paid from the bank account of the person whose name appears first in the application.

(3) For the purposes of sub-section (7) of section 42, the company shall maintain a complete record of private placement offers and acceptances of such offers in Form No. 3.5:

Provided that a copy of such record along with the private placement offer letter in Form No. 3.3 shall be filed with the Registrar with fee as provided in Annexure B and with the Securities and Exchange Board, where the company is listed, within a period of thirty days of circulation of the private placement offer letter.

(4) For the purposes of sub-section (9) of section 42, a return of allotment of securities under section 42 shall be filed with the Registrar in Form No. 3.3 and with the fee as provided in Annexure B along with a complete list of all security holders containing-

(i) full name, address, PAN No., and E-mail id of such security holders;

(ii) class of security held;

(iii) date of becoming security holder;

(iv) number of securities held; nominal value and amount paid up on such securities; and particulars of consideration received.

(5) The provisions of this rule shall not be applicable to any non-banking financial company which is registered with the Reserve Bank of India under RBI Act, 1934.

Foot note:* to be provided/included after receipt of comments from SEBI.**
