

CHAPTER III
PROSPECTUS AND ALLOTMENT OF SECURITIES

PART I
PUBLIC OFFER

Public offer and private placement⁵.

⁶23. (1) A public company may issue securities—

- ⁷(a) to public through prospectus (herein referred to as “public offer”) by complying with the provisions of this Part; or
- ⁸(b) through private placement by complying with the provisions of Part II of this Chapter; or
- (c) through a rights issue or a bonus issue in accordance with the provisions of this Act and in case of a listed company or a company which intends to get its securities listed also with the provisions of the Securities and Exchange Board of India Act, 1992 (15 of 1992) and the rules and regulations made thereunder.

⁸(2) A private company may issue securities—

- (a) by way of rights issue or bonus issue in accordance with the provisions of this Act; or
- (b) through private placement by complying with the provisions of Part II of this Chapter.

^{8a}[(3) *Such class of public companies may issue such class of securities for the purposes of listing on permitted stock exchanges in permissible foreign jurisdictions or such other jurisdictions, as may be prescribed^{8b}.*

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

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

- 5. See SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.
- 6. Section 23, except sub-section (1)(b) and sub-section (2) enforced with effect from 12-9-2013. Sub-section (1)(b) and sub-section (2) enforced with effect from 1-4-2014.
- 7. See also SEBI (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008. See also SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021. See also SEBI (Issue and Listing of Securitised Debt Instruments and Security Receipts) Regulations, 2008. See also SEBI (Issue and Listing of Municipal Debt Securities) Regulations, 2015.
- 8. Enforced with effect from 1-4-2014.
- 8a. Inserted by the Companies (Amendment) Act, 2020, w.e.f. **30-10-2023**.
- 8b. See Companies (Listing of Equity Shares in Permissible Jurisdictions) Rules, 2024.

COMPANIES (LISTING OF EQUITY SHARES IN PERMISSIBLE JURISDICTIONS) RULES, 2024

In exercise of the powers conferred by sub-section (3) of section 23 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules, namely:—

Short title and commencement.

Rule 1 : (1) These rules may be called the Companies (Listing of Equity Shares in Permissible Jurisdictions) Rules, 2024.

(2) They shall come into force on the date of their publication in the Official Gazette.

Definitions.

Rule 2 : (1) In these rules, unless the context otherwise requires,—

- (a) “Act” means the Companies Act, 2013 (18 of 2013);
- (b) “Authority” means the International Financial Services Centres Authority established under section 4 of the International Financial Services Centres Authority Act, 2019 (50 of 2019);
- (c) “fees” means fees as specified under the Companies (Registration Offices and Fees) Rules, 2014;
- (d) “permissible jurisdiction” means a jurisdiction specified in the First Schedule;
- (e) “Schedule” means the Schedule annexed to these rules;
- (f) “Scheme” means the Direct Listing of Equity Shares of Companies Incorporated in India on International Exchanges Scheme made by the Central Government in the Ministry of Finance.

(2) The words and expressions used herein and not defined in these rules but defined in the Act or in the Companies (Specification of Definitions Details) Rules, 2014 or the Scheme, shall have the meanings as respectively assigned to them in the Act, Rules or in the Scheme.

Application.

Rule 3 : The provisions of these rules shall apply to —

- (a) unlisted public companies;
- (b) listed public companies, so far as they are in accordance with regulations framed or directions issued in this regard by the Securities and Exchange Board or the Authority,

which issue their securities for the purposes of listing on permitted stock exchanges in permissible jurisdictions.

Listing on permitted stock exchanges in permissible jurisdictions.

Rule 4 : (1) An unlisted public company, which does not fall under rule 5 and which has no partly paid-up shares, may issue equity shares for the purposes of listing on a stock exchange in a permissible jurisdiction.

Explanation.— For the purposes of this sub-rule, issue of equity shares shall include, offer for sale of equity shares by existing shareholders of the unlisted public company for listing on a stock exchange in a permissible jurisdiction.

(2) The unlisted public company or its existing shareholders referred to in sub-rule (1) shall also comply with the requirements of the Scheme.

(3) Listing of equity shares on permitted stock exchanges in permissible jurisdiction by an unlisted public company which also intends to get its equity shares listed with any

recognised stock exchange as defined under clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) shall also be in compliance with such conditions as may be specified by the Securities and Exchange Board of India.

(4) The unlisted public company shall file the prospectus in e-Form **LEAP-1** specified in the Second Schedule along with the fees within a period of seven days after the same has been finalised and filed in the permitted exchange.

(5) After the listing of the equity shares of a company on any of the stock exchanges in a permissible jurisdiction, the company shall comply with Indian Accounting Standards as specified in the Annexure to the Companies (Indian Accounting Standards) Rules, 2015 in preparation of their financial statements, in addition to any other accounting standard, which they may be required to comply for the preparation of the financial statements filed before the securities regulator concerned, or with the stock exchange concerned, as the case may be.

Certain companies not eligible.

Rule 5 : A company shall not be eligible for issuing its equity shares for listing in accordance with these rules, in case it —

- (a) has been registered under section 8 or declared as Nidhi under section 406 of the Act;
- (b) is a company limited by guarantee and also having share capital;
- (c) has any outstanding deposits accepted from the public as per Chapter V of the Act and rules made thereunder;
- (d) has a negative net worth;

Explanation.— For the purposes of this clause, the expression “net worth” shall have the same meaning as assigned to it under clause (57) of section 2 of the Act;

- (e) has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holder or any other secured creditor:

Provided that this clause shall not apply if the company had made good the default and a period of two years had lapsed since the date of making good the default;

- (f) has made any application for winding-up under the Act or for resolution or winding-up under the Insolvency and Bankruptcy Code, 2016 (31 of 2016) and in case any proceedings against the company for winding-up under the Act or for resolution or winding-up under the Insolvency and Bankruptcy Code, 2016 (31 of 2016) is pending;
- (g) has defaulted in filing of an annual return under section 92 or financial statement under section 137 of the Act within the specified period.

FIRST SCHEDULE

[See rule 2(1)(d) and (e)]

(1)	(2)
<i>Permissible Jurisdiction.</i>	<i>Permitted Stock Exchange.</i>
International Financial Services Centre in India.	India International Exchange, NSE International Exchange.

SECOND SCHEDULE

[Not reproduced]

⁹Power of Securities and Exchange Board to regulate issue and transfer of securities, etc.

¹⁰**24.**^{10a} (1) The provisions contained in this Chapter, Chapter IV and in section 127 shall,—

- (a) in so far as they relate to—
 - (i) issue and transfer of securities; and
 - (ii) non-payment of dividend,

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

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

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

9. Corresponds to section 55A of the 1956 Act.

10. Enforced with effect from 12-9-2013. SEBI to regulate Issue and Transfer of securities [Companies (Removal of Difficulties) Order, 2013. For details, see **Division Three.**] See also SEBI (Issuing Observations on Draft Offer Documents Pending Regulatory Actions) Order, 2006; See also Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012.

10a. In case of financial products, financial services or financial institutions in an International Financial Services Centre, for section 24, the following section shall be substituted, namely:—
 “24. *Power of International Financial Services Centres Authority to regulate issue and transfer of securities, etc.*—(1) The provisions contained in this Chapter, Chapter IV and in section 127 shall,—

- (a) in so far as they relate to —
 - (i) issue and transfer of securities; and
 - (ii) non-payment of dividend,

by listed companies or those companies which intend to get their securities listed on any recognised stock exchange in an International Financial Services Centre, except as provided under this Act be administered by the International Financial Services Centres Authority by making regulations in this behalf;

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

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

(2) The International Financial Services Centres Authority shall, in respect of matters specified in sub-section (1), exercise the powers under sub-sections (1), (2A), (3) and (4) of section 11, sections 11A, 11B and 11D of the Securities and Exchange Board of India Act, 1992 (15 of 1992), as conferred upon it under section 13 of the International Financial Services Centres Authority Act, 2019 (50 of 2019).” — *Notification No. S.O. 5160(E), dated 4-11-2022.*

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

¹²**Document containing offer of securities for sale to be deemed prospectus.**

¹³**25.** ^{13a}(1) Where a company allots or agrees to allot any securities of the company with a view to all or any of those securities being offered for sale to the public, any document by which the offer for sale to the public is made shall, for all purposes, be deemed to be a prospectus issued by the company; and all enactments and rules of law as to the contents of prospectus and as to liability in respect of mis-statements, in and omissions from, prospectus, or otherwise relating to prospectus, shall apply with the modifications specified in sub-sections (3) and (4) and shall have effect accordingly, as if the securities had been offered to the public for subscription and as if persons accepting the offer in respect of any securities were subscribers for those securities, but without prejudice to the liability, if any, of the persons by whom the offer is made in respect of mis-statements contained in the document or otherwise in respect thereof.

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

- (a) that an offer of the securities or of any of them for sale to the public was made within six months after the allotment or agreement to allot; or
- (b) that at the date when the offer was made, the whole consideration to be received by the company in respect of the securities had not been received by it.

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

- (i) it required a prospectus to state in addition to the matters required by that section to be stated in a prospectus—
 - (a) the net amount of the consideration received or to be received by the company in respect of the securities to which the offer relates; and
 - (b) the time and place at which the contract where under the said securities have been or are to be allotted may be inspected;

11. For text of sections 11(1), (2A), (3) and (4), 11A, 11B and 11D of the Securities and Exchange Board of India Act, 1992, see **Appendix I**.

12. Corresponds to section 64 of the 1956 Act.

13. Section 25, except sub-section (3), enforced with effect from 12-9-2013. Sub-section (3) enforced with effect from 1-4-2014.

13a. See also SEBI (Framework for Rejection of Draft Offer Documents) Order, 2012 and SEBI (Issuing Observations on Draft Offer Documents Pending Regulatory Actions) Order, 2006.

14. Enforced with effect from 1-4-2014.

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

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

¹⁵**Matters to be stated in prospectus.**

¹⁶**26.**¹⁷ ^{17a}(1) Every prospectus issued by or on behalf of a public company either with reference to its formation or subsequently, or by or on behalf of any person who is or has been engaged or interested in the formation of a public company, shall be dated and signed and shall ¹⁸[state such information and set out such reports on financial information as may be specified by the Securities and Exchange Board in consultation with the Central Government:

^{18a}**Provided** that until the Securities and Exchange Board specifies the information and reports on financial information under this sub-section, the regulations made by the Securities and Exchange Board under the Securities and Exchange Board of India Act, 1992 (15 of 1992), in respect of such financial information or reports on financial information shall apply.]

(a) ¹⁹[***]

15. Corresponds to sections 55, 56, 57, 58, 60 and Schedule II of the 1956 Act.

16. Enforced with effect from 1-4-2014.

17. See also SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018. See also SEBI (Issuing Observations on Draft Offer Documents Pending Regulatory Actions) Order, 2006. See also SEBI (Framework for Rejection of Draft Offer Documents) Order, 2012.

17a. In case of financial products, financial services or financial institutions in an International Financial Services Centre, in sub-section (1) of section 26, for the words "Securities and Exchange Board", the words "International Financial Services Centres Authority" shall be substituted. — *Notification No. S.O. 5160(E), dated 4-11-2022.*

18. Inserted by the Companies (Amendment) Act, 2017, w.e.f. 7-5-2018.

18a. In case of financial products, financial services or financial institutions in an International Financial Services Centre, in the proviso to sub-section (1) of section 26, for the words "until the Securities and Exchange Board specifies", the words "until the International Financial Services Centres Authority specifies" shall be substituted. — *Notification No. S.O. 5160(E), dated 4-11-2022.*

19. Omitted by the Companies (Amendment) Act, 2017, w.e.f. 7-5-2018. Prior to its omission, clause (a) read as under :

(a) state the following information, namely:—

- (i) names and addresses of the registered office of the company, company secretary, Chief Financial Officer, auditors, legal advisers, bankers, trustees, if any, underwriters and such other persons as may be prescribed;
- (ii) dates of the opening and closing of the issue, and declaration about the issue of allotment letters and refunds within the prescribed time;
- (iii) a statement by the Board of Directors about the separate bank account where all monies received out of the issue are to be transferred and disclosure of details of all monies including utilised and unutilised monies out of the previous issue in the prescribed manner;
- (iv) details about underwriting of the issue;

(Contd. on page 1.103)

(b) ²⁰[***]

(Contd. from page 1.102)

- (v) consent of the directors, auditors, bankers to the issue, expert's opinion, if any, and of such other persons, as may be prescribed;
 - (vi) the authority for the issue and the details of the resolution passed therefor;
 - (vii) procedure and time schedule for allotment and issue of securities;
 - (viii) capital structure of the company in the prescribed manner;
 - (ix) main objects of public offer, terms of the present issue and such other particulars as may be prescribed;
 - (x) main objects and present business of the company and its location, schedule of implementation of the project;
 - (xi) particulars relating to—
 - (A) management perception of risk factors specific to the project;
 - (B) gestation period of the project;
 - (C) extent of progress made in the project;
 - (D) deadlines for completion of the project; and
 - (E) any litigation or legal action pending or taken by a Government Department or a statutory body during the last five years immediately preceding the year of the issue of prospectus against the promoter of the company;
 - (xii) minimum subscription, amount payable by way of premium, issue of shares otherwise than on cash;
 - (xiii) details of directors including their appointments and remuneration, and such particulars of the nature and extent of their interests in the company as may be prescribed; and
 - (xiv) disclosures in such manner as may be prescribed* about sources of promoter's contribution;"
20. Omitted by the Companies (Amendment) Act, 2017, w.e.f. 7-5-2018. Prior to its omission, clause (b) read as under :
- "(b) set out the following reports for the purposes of the financial information, namely:—
- (i) reports by the auditors of the company with respect to its profits and losses and assets and liabilities and such other matters as may be prescribed;
 - (ii) reports relating to profits and losses for each of the five financial years immediately preceding the financial year of the issue of prospectus including such reports of its subsidiaries and in such manner as may be prescribed:

Provided that in case of a company with respect to which a period of five years has not elapsed from the date of incorporation, the prospectus shall set out in such manner as may be prescribed, the reports relating to profits and losses for each of the financial years immediately preceding the financial year of the issue of prospectus including such reports of its subsidiaries;
 - (iii) reports made in the prescribed manner by the auditors upon the profits and losses of the business of the company for each of the five financial years immediately preceding issue and assets and liabilities of its business on the last date to which the accounts of the business were made up, being a date not more than one hundred and eighty days before the issue of the prospectus:

Provided that in case of a company with respect to which a period of five years has not elapsed from the date of incorporation, the prospectus shall set out in the prescribed manner, the reports made by the auditors upon the profits and losses of the business of the company for all financial years from the date of its incorporation, and assets and liabilities of its business on the last date before the issue of prospectus; and
 - (iv) reports about the business or transaction to which the proceeds of the securities are to be applied directly or indirectly;"

- (c) make a declaration about the compliance of the provisions of this Act and a statement to the effect that nothing in the prospectus is contrary to the provisions of this Act, the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and the Securities and Exchange Board of India Act, 1992 (15 of 1992) and the rules and regulations made thereunder; and
- (d) ²¹[***]
- (2) Nothing in sub-section (1) shall apply—
- (a) to the issue to existing members or debenture-holders of a company, of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant has a right to renounce the shares or not under sub-clause (ii) of clause (a) of sub-section (1) of section 62 in favour of any other person; or
- (b) to the issue of a prospectus or form of application relating to shares or debentures which are, or are to be, in all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on a recognised stock exchange.
- (3) Subject to sub-section (2), the provisions of sub-section (1) shall apply to a prospectus or a form of application, whether issued on or with reference to the formation of a company or subsequently.
- Explanation.*—The date indicated in the prospectus shall be deemed to be the date of its publication.
- (4) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless on or before the date of its publication, there has been delivered to the Registrar for ²²[filing], a copy thereof signed by every person who is named therein as a director or proposed director of the company or by his duly authorised attorney.
- (5) A prospectus issued under sub-section (1) shall not include a statement purporting to be made by an expert unless the expert is a person who is not, and has not been, engaged or interested in the formation or promotion or management, of the company and has given his written consent to the issue of the prospectus and has not withdrawn such consent before the delivery of a copy of the prospectus to the Registrar for ²²[filing] and a statement to that effect shall be included in the prospectus.
- (6) Every prospectus issued under sub-section (1) shall, on the face of it,—
- (a) state that a copy has been delivered for ²²[filing] to the Registrar as required under sub-section (4); and

21. Omitted by the Companies (Amendment) Act, 2017, w.e.f. 7-5-2018. Prior to its omission, clause (d) read as under :

“(d) state such other matters and set out such other reports, as may be prescribed.”

22. Substituted for “registration” by the Companies (Amendment) Act, 2019, w.e.f. 15-8-2019.

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

(7) ²³[***]

(8) No prospectus shall be valid if it is issued more than ninety days after the date on which a copy thereof is delivered to the Registrar under sub-section (4).

(9) If a prospectus is issued in contravention of the provisions of this section, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees and every person who is knowingly a party to the issue of such prospectus shall be punishable ²⁴[***] with fine which shall not be less than fifty thousand rupees but which may extend to ^{24a}[three lakh rupees].

RELEVANT RULES : RULES 3, 4, 5 AND 6 OF THE COMPANIES (PROSPECTUS AND ALLOTMENT OF SECURITIES) RULES, 2014 [NOW OMITTED]

Information to be stated in the prospectus.

Rule 3 : ²⁵[***]

23. Omitted by the Companies (Amendment) Act, 2019, w.e.f. 15-8-2019. Prior to its omission, sub-section (7) read as under :

“(7) The Registrar shall not register a prospectus unless the requirements of this section with respect to its registration are complied with and the prospectus is accompanied by the consent in writing of all the persons named in the prospectus.”

24. Words “with imprisonment for a term which may extend to three years or” omitted by the Companies (Amendment) Act, 2020, w.e.f. 21-12-2020.

24a. Substituted for “three lakh rupees, or with both”, *ibid*.

25. Omitted by the Companies (Prospectus and Allotment of Securities) Amendment Rules, 2018, w.e.f. 7-5-2018. Prior to its omission, rule 3 read as under :

“3. *Information to be stated in the prospectus.*—(1) The Prospectus to be issued shall contain—

- (a) the names, addresses and contact details of the corporate office of the issuer company, compliance officer of the issuer company, merchant bankers and co-managers to the issue, registrar to the issue, bankers to the issue, stock brokers to the issue, credit rating agency for the issue, arrangers, if any, of the instrument, names and addresses of such other persons as may be specified by the Securities and Exchange Board in its regulations;
- (b) the dates relating to opening and closing of the issue;
- (c) a declaration which shall be made by the Board or the Committee authorised by the Board in the prospectus that the allotment letters shall be issued or application money shall be refunded within fifteen days from the closure of the issue or such lesser time as may be specified by Securities and Exchange Board or else the application money shall be refunded to the applicants forthwith, failing which interest shall be due to be paid to the applicants at the rate of fifteen per cent per annum for the delayed period.
- (d) a statement given by the Board that all monies received out of the issue shall be transferred to a separate bank account maintained with a Scheduled Bank;
- (e) the details of all utilized and unutilised 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 till the time any part of the proceeds of such previous

(Contd. on page 1.106)

(Contd. from page 1.105)

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;

- (f) the names, addresses, telephone numbers, fax numbers and e-mail addresses of the underwriters and the amount underwritten by them;
- (g) the consent of trustees, solicitors or advocates, merchant bankers to the issue, registrar to the issue, lenders and experts.

(2) The capital structure of the company shall be presented in the following manner, namely:—

- (i) (a) the authorised, issued, subscribed and paid up capital (number of securities, description and aggregate nominal value);
- (b) the size of the present issue;
- (c) the paid up capital—
 - (A) after the issue;
 - (B) after conversion of convertible instruments (if applicable);
- (d) the share premium account (before and after the issue);
- (ii) the details of the existing share capital of the issuer company in a tabular form, indicating therein with regard to each allotment, the date of allotment, the number of shares allotted, the face value of the shares allotted, the price and the form of consideration:

Provided that in the case of an initial public offer of an existing company, the details regarding individual allotment shall be given from the date of incorporation of the issuer and in the case of a listed issuer company, the details shall be given for five years immediately preceding the date of filing of the prospectus:

Provided that the issuer company shall also disclose the number and price at which each of the allotments were made in the last two years preceding the date of the prospectus separately indicating the allotments made for considerations other than cash and the details of the consideration in each case.

(3) The prospectus to be issued shall contain the following particulars, namely:—

- (a) the objects of the issue;
- (b) the purpose for which there is a requirement of funds;
- (c) the funding plan (means of finance);
- (d) the summary of the project appraisal report (if any);
- (e) the schedule of implementation of the project;
- (f) the interim use of funds, if any.

(4) The prospectus to be issued shall contain the following details and disclosures, namely:—

- (i) the details of any litigation or legal action pending or taken by any Ministry or Department of the Government or a statutory authority against any promoter of the issuer company during the last five years immediately preceding the year of the issue of the prospectus and any direction issued by such Ministry or Department or statutory authority upon conclusion of such litigation or legal action shall be disclosed;
- (ii) the details of pending litigation involving the issuer, promoter, director, subsidiaries, group companies or any other person, whose outcome could have material adverse effect on the position of the issuer;
- (iii) the details of pending proceedings initiated against the issuer company for economic offences;
- (iv) the details of default and non-payment of statutory dues etc.

(5) The details of directors including their appointment and remuneration, and particulars of the nature and extent of their interests in the company shall be disclosed in the following manner, namely:—

(Contd. on page 1.107)

Reports to be set out in the Prospectus.**Rule 4 :** ²⁶[***]

(Contd. from page 1.106)

- (i) the name, designation, Director Identification Number (DIN), age, address, period of directorship, details of other directorships;
 - (ii) the remuneration payable or paid to the director by the issuer company, its subsidiary and associate company; shareholding of the director in the company including any stock options; shareholding in subsidiaries and associate companies; appointment of any relatives to an office or place of profit;
 - (iii) the full particulars of the nature and extent of interest, if any, of every director:
 - (a) in the promotion of the issuer company; or
 - (b) in any immovable property acquired by the issuer company in the two years preceding the date of the Prospectus or any immovable property proposed to be acquired by it;
 - (iv) where the interest of such a director consists in being a member of a firm or company, the nature and extent of his interest in the firm or company, with a statement of all sums paid or agreed to be paid to him or to the firm or company in cash or shares or otherwise by any person either to induce him to become, or to help him qualify as a director, or otherwise for services rendered by him or by the firm or company, in connection with the promotion or formation of the issuer company shall be disclosed.
- (6) The sources of promoters' contribution, if any, shall be disclosed in the following manner, namely:—
- (i) the total shareholding of the promoters, clearly stating the name of the promoter, nature of issue, date of allotment, number of shares, face value, issue price or consideration, source of funds contributed, date when the shares were made fully paid up, percentage of the total pre and post issue capital;
 - (ii) the proceeds out of the sale of shares of the company and shares of its subsidiary companies previously held by each of the promoters;
 - (iii) the disclosure for sources of promoters contribution shall also include the particulars of name, address and the amount so raised as loan, financial assistance etc., if any, by promoters for making such contributions and in case of own sources, complete details thereof."
26. Omitted by the Companies (Prospectus and Allotment of Securities) Amendment Rules, 2018, w.e.f. 7-5-2018. Prior to its omission, rule 4 read as under :
- "4. *Reports to be set out in the Prospectus.*—The following reports shall be set out with the prospectus, namely:—
- (1) The reports by the auditors with respect to profits and losses and assets and liabilities.
- Explanation.*—For the purposes of this sub-rule, the report shall also include the amounts or rates of dividends, if any, paid by the issuer company 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:
- Provided** that 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 company 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 from the auditors that such accounts have been examined and found correct and the said statement may indicate the nature of provision or adjustments made or which are yet to be made.

(Contd. on page 1.108)

Other matters and reports to be stated in the prospectus.**Rule 5 : ²⁷[***]**

(Contd. from page 1.107)

(2) The 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 issue of the prospectus shall—

- (a) if the company has no subsidiaries, deal 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 separately with issuer company's profits or losses as provided in clause (a) and in addition, deal either—
 - (i) as a whole with the combined profits or losses of its subsidiaries, so far as they concern members of the issuer company; or
 - (ii) individually with the profits or losses of each subsidiary, so far as they concern members of the issuer company; or
 - (iii) as a whole with the profits or losses of the company, and, so far as they concern members of the issuer company, with the combined profits or losses of its subsidiaries.

(3) The 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)."

27. Omitted by the Companies (Prospectus and Allotment of Securities) Amendment Rules, 2018, w.e.f. 7-5-2018. Prior to its omission, rule 5 read as under :

"5. *Other matters and reports to be stated in the prospectus.*—The prospectus shall include the following other matters and reports, namely:—

(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 shall become entitled to an interest in either the capital or profits and losses or both, in such business exceeding fifty per cent thereof,

a report made by a chartered accountant (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;
- (c) in purchase or acquisition of any immovable property including indirect acquisition of immovable property for which advances have been paid to even third parties, disclosures regarding—
 - (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 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; and

(Contd. on page 1.109)

(Contd. from page 1.108)

- (iv) the particulars of every transaction relating to the property, completed within the two preceding years, in which any vendor of the property 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 the 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 are to be applied directly or indirectly and 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 shall become a subsidiary of the company, a report shall be made by a Chartered Accountant (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 company and what allowance would have been required to be made, in relation to assets and liabilities so dealt with for the holders of the balance shares, if the issuer company had at all material times held the shares proposed 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 provided in sub-clause (i) of clause (a).
- (3) The matters relating to terms and conditions of the term loans including re-scheduling, prepayment, penalty, default.
- (4) The aggregate number of securities of the issuer company and its subsidiary companies purchased or sold by the promoter group and by the directors of the company which is a promoter of the issuer company and by the directors of the issuer company and their relatives within six months immediately preceding the date of filing the prospectus with the Registrar of Companies shall be disclosed.
- (5) The matters relating to—
- (A) Material contracts;
 - (B) Other material contracts;
 - (C) Time and place at which the contracts together with documents will be available for inspection from the date of prospectus until the date of closing of subscription list.
- (6) The related party transactions entered during the last five financial years immediately preceding the issue of prospectus as under—
- (a) all transactions with related parties with respect to giving of loans or, guarantees, providing securities in connection with loans made, or investments made;
 - (b) all other transactions which are material to the issuer company or the related party, or any transactions that are unusual in their nature or conditions, involving goods, services, or tangible or intangible assets, to which the issuer company or any of its parent companies was a party:

(Contd. on page 1.110)

Period for which information to be provided in certain cases.**Rule 6 : ²⁸[***]**

(Contd. from page 1.109)

Provided that the disclosures for related party transactions for the period prior to notification of these rules shall be to the extent of disclosure requirements as per the Companies Act, 1956 and the relevant accounting standards prevailing at the said time.

(7) The summary of reservations or qualifications or adverse remarks of auditors in the last five financial years immediately preceding the year of issue of prospectus and of 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 reservations or qualifications or adverse remarks.

(8) The details of any inquiry, inspections or investigations initiated or conducted under the Companies Act or any previous companies law in the last five years immediately preceding the year of issue of prospectus in the case of company and all of its subsidiaries; and if there were any prosecutions filed (whether pending or not); fines imposed or compounding of offences done in the last five years immediately preceding the year of the prospectus for the company and all of its subsidiaries.

(9) The details of acts of material frauds committed against the company in the last five years, if any, and if so, the action taken by the company.

(10) A fact sheet shall be included at the beginning of the prospectus which shall contain—

- (a) the type of offer document (“Red Herring Prospectus” or “Shelf Prospectus” or “Prospectus”);
- (b) the name of the issuer company, date and place of its incorporation, its logo, address of its registered office, its telephone number, fax number, details of contact person, website address, e-mail address;
- (c) the names of the promoters of the issuer company;
- (d) the nature, number, price and amount of securities offered and issue size, as may be applicable;
- (e) the aggregate amount proposed to be raised through all the stages of offers of specified securities made through the shelf prospectus;
- (f) the name, logo and address of the registrar to the issue, along with its telephone number, fax number, website address and e-mail address;
- (g) the issue schedule—
 - (i) date of opening of the issue;
 - (ii) date of closing of the issue;
 - (iii) date of earliest closing of the issue, if any.
- (h) the credit rating, if applicable;
- (i) all the grades obtained for the initial public offer;
- (j) the name(s) of the recognised stock exchanges where the securities are proposed to be listed;
- (k) the details about eligible investors;
- (l) coupon rate, coupon payment frequency, redemption date, redemption amount and details of debenture trustee in case of debt securities.”

28. Omitted by the Companies (Prospectus and Allotment of Securities) Amendment Rules, 2018, w.e.f. 7-5-2018. Prior to its omission, rule 6 read as under :

“6. *Period for which information to be provided in certain cases.*—For the matters specified in rules 3 to 5, which require a company to provide certain particulars or information relating to the preceding five financial years, it shall be sufficient compliance for a company which has not completed five years, if such company provides such particulars or information for all the previous years since its incorporation.”

²⁹Variation in terms of contract or objects in prospectus.

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

Provided that the details, as may be prescribed³¹, of the notice in respect of such resolution to shareholders, shall also be published in the newspapers (one in English and one in vernacular language) in the city where the registered office of the company is situated indicating clearly the justification for such variation:

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

^{31a}(2)^{31b} The dissenting shareholders being those shareholders who have not agreed to the proposal to vary the terms of contracts or objects referred to in the prospectus, shall be given an exit offer by promoters or controlling shareholders at such exit price, and in such manner and conditions as may be specified by the Securities and Exchange Board by making regulations in this behalf.

RELEVANT RULE : RULE 7 OF THE COMPANIES (PROSPECTUS AND ALLOTMENT OF SECURITIES) RULES, 2014

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

Rule 7 : (1) Where the company has raised money from public through prospectus and 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 the prospectus was issued except by passing a special resolution through postal ballot and the notice of the proposed special resolution shall contain the following particulars, namely:—

- (a) the original purpose or object of the Issue;
- (b) the total money raised;
- (c) the money utilised for the objects of the company stated in the prospectus;
- (d) the extent of achievement of proposed objects (that is fifty per cent; sixty per cent, etc);

29. Corresponds to section 61 of the 1956 Act.

30. Enforced with effect from 1-4-2014.

31. See rule 7 and Form No. PAS-1 of the Companies (Prospectus and Allotment of Securities) Rules, 2014.

31a. In case of financial products, financial services or financial institutions in an International Financial Services Centre, in sub-section (2) of section 27, for the words "Securities and Exchange Board", the words "International Financial Services Centres Authority" shall be substituted. — *Notification No. S.O. 5160(E), dated 4-11-2022.*

31b. See also SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.

- (e) the unutilised amount out of the money so raised through prospectus;
 - (f) the particulars of the proposed variation in the terms of contracts referred to in the prospectus or objects for which prospectus was issued;
 - (g) the reason and justification for seeking variation;
 - (h) the proposed time limit within which the proposed varied objects would be achieved;
 - (i) the clause-wise details as specified in sub-rule (3) of rule 3 as was required with respect to the originally proposed objects of the issue;
 - (j) the risk factors pertaining to the new objects; and
 - (k) the other relevant information which is necessary for the members to take an informed decision on the proposed resolution.
- (2) The advertisement of the notice for getting the resolution passed 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 PAS-1 and such advertisement shall be published simultaneously with dispatch of Postal Ballot Notices to Shareholders.
- (3) The notice shall also be placed on the website of the company, if any.

Offer of sale of shares by certain members of company.

³²**28.**³³ (1) Where certain members of a company propose, in consultation with the Board of Directors to offer, in accordance with the provisions of any law for the time being in force, whole or part of their holding of shares to the public, they may do so in accordance with such procedure as may be prescribed³⁴.

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

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

32. Enforced with effect from 1-4-2014.

33. See also SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.

34. See rule 8 of the Companies (Prospectus and Allotment of Securities) Rules, 2014.