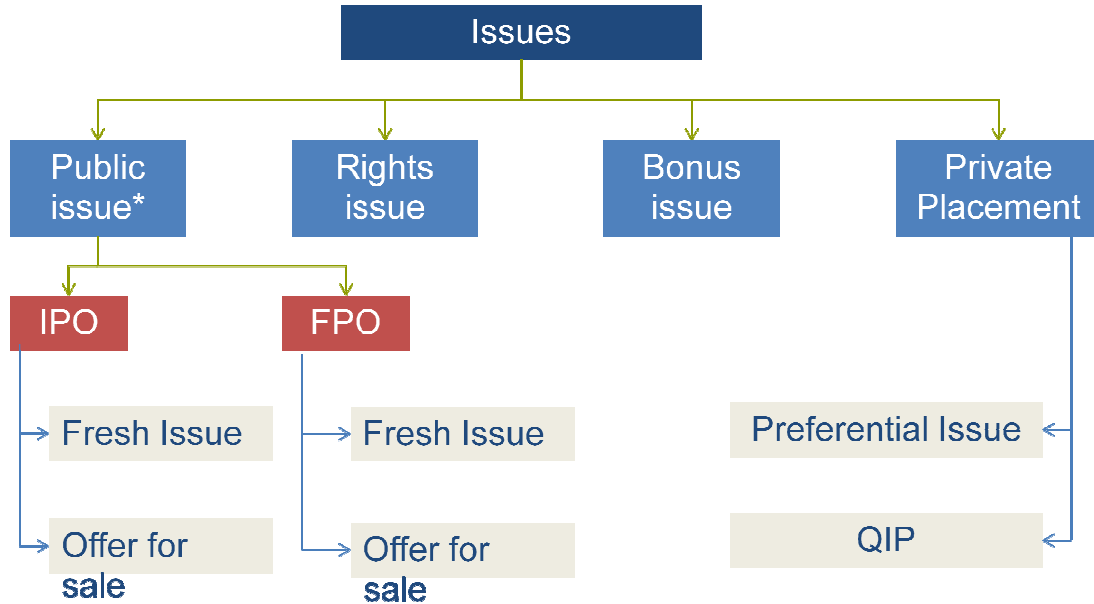


SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009

Applicable for CA Final November 2010 examination

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Types of issues



* Fixed price or book building process

GUIDELINES RELATING TO PUBLIC ISSUE

<p>Essential conditions for Initial Public Offer (IPO)</p>	<p>An issuer may make IPO in following 3 options-</p> <p>Option 1 – Profitability Route</p> <ul style="list-style-type: none">• An issuer company may make an IPO only if :<ul style="list-style-type: none">• Net tangible assets of at least Rs 3 crores in each of 3 preceding years, of which not more than 50% is held in monetary assets except were the issuer company has made firm commitments to utilise such excess monetary assets in its project• Issuer company has a track record of distributable profits in terms of section 205 of the Companies Act, 1956 for at least 3 years out of immediately preceding 5 years
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- Net worth of at least Rs 1 crore in each of preceding 3 years
- Size of the public issue– sum of (proposed issue + all previous issues) made in the same financial year =< 5 times its pre-issue net worth as per the audited balance sheet of the preceding financial year
- If its name is changed within last 1 year, 50% or more of the revenue for preceding 1 year has been earned from the activity indicated by new name

Option 2 – Qualified Institutional Buyer (QIB) Route

An issuer company not satisfying any of the conditions mentioned under option 1 may make an IPO if-

- Issue is made through book building process and the issuer undertakes to allot 50% or more of its issue to QIB and to refund full subscription monies if it fails to make allotment to the QIB;
 - The minimum post-issue face value capital of the issuer is Rs. 10 crores
- OR
- Issuer shall be compulsory undertake market-making for at least 2 years from the date of listing of specified securities subject to specified conditions.

Option 3 – Appraisal Route

An issuer not satisfying any of the conditions mentioned under option 1 may make an IPO if-

- Minimum 15% of cost of project is appraised & participated by scheduled commercial banks or public financial institutions
 - The minimum post-issue face value capital of the issuer is Rs. 10 crores
- OR
- Issuer shall be compulsory undertake market-making for at least 2 years from the date of listing of specified securities subject to specified conditions.

	<<only for knowledge purpose – word 'project' has been defined as the object for which monies are proposed to be raised to cover the objects of the issue >>
Other conditions	<ul style="list-style-type: none"> • A company can make a public issue only if – <ul style="list-style-type: none"> • Issuer company / its promoters / promoter group / directors / persons in control of Issuer Company are not debarred from accessing the capital market. • After entering into an agreement with depository for dematerialisation of specified securities already issued or proposed to be issued • All existing partly paid up equity shares of the issuer company shall be either been fully paid or forfeited • An issuer shall make an allotment only if prospective allottees are more than 1000 • Issuer shall obtain grading for IPO from at least one credit rating agency on or before date of registering prospectus or red herring prospectus with Registrar of Companies <ul style="list-style-type: none"> • A company should not have convertible securities or any other right which would entitle any person to receive equity shares after IPO

FELLOW ON PUBLIC OFFER (FPO)

Essential conditions	<ul style="list-style-type: none"> • An issuer may make a further public offer if it satisfies <u>only</u> below mentioned conditions <ul style="list-style-type: none"> • Size of the public issue– sum of (proposed issue + all previous issues) made in the same financial year =< 5 times its pre-issue net worth as per the audited balance sheet of the preceding financial year • If its name is changed within last 1 year, 50% or more of the revenue for preceding 1 year has been earned from the activity indicated by new name
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GREEN SHOE OPTION

Meaning	<ul style="list-style-type: none"> • Green Shoe option means an option of allotting equity shares in excess of equity shares offered in the public issue as a post listing price stabilizing mechanism
Necessity	<ul style="list-style-type: none"> • Issuer Company use green shoe option mechanism during IPO to ensure that the shares price on the stock exchanges does not fall below the issue price after issue of shares.

Working Mechanism

- The Green shoe option is exercised by a company making a public issue. A contract has been entered in relation to green shoe option with the existing shareholders (i.e with promoters) before the public issue of shares.
- The guidelines require the promoter to lend his shares (not exceeding 15% of issue size) which is to be used for price stabilisation to be carried out by a stabilising agent (normally merchant banker or book runner) on behalf of the Company.
- The stabilization period can be for a period of maximum period of 30 days from the date of allotment of shares to bring stability in post listing pricing of shares.
- The company then goes on to make allotment, including over allotment, to the extent it has exercised the greenshoe option.

E.g. - The entire process of a greenshoe option works on over-allotment of shares. Say, for instance, that a company is planning to issue only 100,000 shares, but in order to utilize the greenshoe option; it actually issues 115,000 shares, in which case the over-allotment would be 15,000 shares. Please note that the company does not issue any new shares for the over-allotment.

The 15,000 shares used for the over-allotment are actually borrowed from the promoters with whom the stabilizing agent enters into a separate agreement. For the subscribers of a public issue, it makes no difference whether the company is allotting shares out of the freshly issued 100,000 shares or from the 15,000 shares borrowed from the promoters. Once allotted, a share is just a share for an investor.

For the company, however, the situation is totally different. The money received from the over-allotment is required to be kept in a separate bank account (i.e. escrow account)

The stabilizing agent start its process only after trading in the share starts at the stock exchanges.

In case the shares are trading at a price lower than the offer price, the stabilizing agent starts buying the shares by using the money lying in the separate bank account. In this manner, by buying the shares when others are selling, the stabilizing agent tries to put the brakes on falling prices. The shares so bought from the market are handed over to the promoters from whom they were borrowed.

In case the newly listed shares start trading at a price higher than the offer price, the stabilizing agent does not buy any shares.

RIGHT ISSUE OF SHARES

Record date	<ul style="list-style-type: none">• A listed issuer company, who intends to make right issue, shall announce a record date for the purpose of determining the shareholders eligible to apply for specified securities in proposed right issue• Right issue cannot be withdrawn after a company announces record date
Restrictions on right issue	<ul style="list-style-type: none">• No issuer shall make a right issue of equity shares if it has outstanding fully / partly convertible debt instruments at the time of making rights issue, unless made reservation of equity shares of the same class in favour of the holders of such outstanding convertible debt instruments in proportion to the convertible part thereof
Other Essential Conditions	<ul style="list-style-type: none">• The abridged Letter of offer, along with application form, shall be dispatched to all the existing shareholders at least 3 days before the date of opening the issue• Right issue subscription should be kept open for :<ul style="list-style-type: none">○ Minimum of 15 working days○ Maximum 30 working days

PREFERENTIAL ISSUE

Non – Applicability	<p>Preferential issue guidelines not applicable in following cases -</p> <ul style="list-style-type: none">• Conversion of loan / option attached to convertible debt instruments in terms of section 81(3) and 81(4) of the Companies Act, 1956• Merger/ Demerger/ Amalgamations scheme approved by a High Court under 391 to 394 of the Companies Act, 1956• In terms of rehabilitation schemes approved by BIFR
Conditions for preferential issue	<ul style="list-style-type: none">• A listed issuer may make a preferential issue of specified securities, if –<ul style="list-style-type: none">• A special resolution has been passed by its shareholders• All equity shares held by the proposed allottees in the issuer

	<p>are in dematerialised form</p> <ul style="list-style-type: none"> • Continuous listing of equity shares as specified in the listing agreement to be complied with • Issuer has obtained Permanent Account Number of the proposed allottees • No preferential issue to a person who has sold equity shares of issuer during the 6 months preceding the relevant date <p><i><<for knowledge purpose – the term ‘relevant date’ has been defined in the guidelines – May not be relevant for exam>></i></p>
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BONUS ISSUE OF SHARES

Essential conditions	<p>A listed issuer may issue bonus shares to its members, subject to provisions of the Companies Act, 1956, if –</p> <ul style="list-style-type: none"> • It is authorised by its articles of association for issue of bonus shares, capitalisation of reserves <ul style="list-style-type: none"> • If no provisions in the articles of association, the issuer company shall pass a resolution at its general meeting to amend articles of association for capitalisation of reserves • It has not defaulted in payment of interest or principal of fixed deposits or debt securities issued by it • It has sufficient reason to believe that it has not defaulted in respect of the payment of statutory dues of the employees such as contribution to provident fund , gratuity and bonus • The partly paid shares, if any outstanding on the date of allotment, are made fully paid up
Restriction on bonus issue	<ul style="list-style-type: none"> • No issuer shall make a bonus issue of equity shares if it has outstanding fully or partly convertible debt instruments at the time of making the bonus issue
Bonus shares only against reserves, etc. if capitalised in cash	<ul style="list-style-type: none"> • Bonus issue shall be made out of following – <ul style="list-style-type: none"> • Free reserves built out of the genuine profits or • Securities premium collected in cash only <p>Revaluation reserve cannot be used</p>

Time lines

- An issuer, announcing bonus issue after the board approval and not requiring shareholder's approval for capitalization of profits or reserves for making the bonus issue – within 15 days from board approval
- When shareholders approval required – within 2 months from the board meeting
- Issue cannot be withdrawn once decision to make a bonus issue is made