

Procedure for Issue of Equity Shares on Preferential basis

Sr. No.	Governing Provisions:
1.	Section 23, 42, 62(1)(c), 108, 110 Companies Act, 2013 and rules made thereunder (CA, 2013)
2.	Rule 13 & 14 of Companies (Share Capital and Debentures) Rules, 2014 Rule 14, 20, 22 of Companies (Management and Administration) Rules, 2014 Rule 14 of Companies (Prospectus and Allotment of Securities) Rules, 2014 (Prospectus Rules)
3.	SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR)
4.	Chapter V of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (ICDR)
5.	SEBI (Prohibition of Insider Trading) Regulations, 2015 (PIT Reg, 2015 or Insider Regulations)
6.	Secretarial Standards 1 & 2 (SS-1 and SS-2)
7.	SEBI, NSE and BSE Circulars (Circulars)
8.	MCA Notifications (Notification)

❖ Concept of “Outcome of Board Meeting (OBM)”

Board Meeting concluded within normal trading hours	Board Meeting concluded after closure of normal trading hours
Within 30 Minutes from closure of Board Meeting	Within 03 Hours from conclusion of Board Meeting

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Definitions:

(A) **SEBI ICDR, Reg 2018- Reg. 2(nn):**

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

(B) **Companies Act, 2013-Section 61(1) (c) read with rule 13 of Companies (Share Capital and Debentures) Rules, 2014**

Explanation.-For the purposes of this rule, (i) the expression 'Preferential Offer' means an issue of shares or other securities, by a company to any select person or group of persons on a preferential basis and does not include shares or other securities offered through a public issue, rights issue, employee stock option scheme, employee stock purchase scheme or an issue of sweat equity shares or bonus shares or depository receipts issued in a country outside India or foreign securities;

Reg. 3: Applicability of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018

Unless otherwise provided, these regulations shall apply to the following:

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

Provided that in case of rights issue of size less than fifty crores rupees, the issuer shall prepare the letter of offer in accordance with requirements as specified in these regulations and file the same with the Board for information and dissemination on the Board's website.

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

Reg. 161: For the purpose of this Chapter, “relevant date” means:

- a) in case of preferential issue of equity shares, the date thirty days prior to the date on which the meeting of shareholders is held to consider the proposed preferential issue:

Provided that in case of a preferential issue of specified securities pursuant to any resolution of stressed assets under a framework specified by the Reserve Bank of India or a resolution plan approved by the National Company Law Tribunal under the Insolvency and Bankruptcy Code 2016,, the date of approval of the corporate debt restructuring package or resolution plan shall be the relevant date.

- b) in case of a preferential issue of convertible securities, either the relevant date referred to in clause (a) of this regulation or a date thirty days prior to the date on which the holders of the convertible securities become entitled to apply for the equity shares.

Explanation: Where the relevant date falls on a weekend or a holiday, the day preceding the weekend or the holiday will be reckoned to be the relevant date.

Procedure for issue of equity shares on Preferential Basis

1. **Issue notice of Board Meeting for alteration of Memorandum of Association (MoA), Articles of Association (AoA), if any, for issuing shares on preferential basis, approval of draft offer letter, list of proposed allottee, evaluation of valuation report, relevant date and approval of notice for General Meeting/Postal Ballot:**[Ref: Section 173(3)& SS-1]

The Company has to issue 7 days' notice (shorter notice if any) for convening a board meeting to pass a board resolution for alteration of Articles of Association (AoA), if required, for issuing shares on preferential basis, approval of draft offer letter, list of proposed allottee, evaluation of valuation report, relevant date and notice of General Meeting/Postal Ballot to decide cut-off date for dispatch notice of General Meeting/Postal Ballot.

2. **Prior Intimation of Board Meeting and closure of Trading Window:**[Ref: Reg. 29(1)(d) & (2) of LODR & read with Reg. 9 and Sch. B of PIT Reg. 2015] (Pdf and XBRL mode)

The Company is required to intimate **at least 02 working days in advance**, excluding the date of the intimation and date of the meeting before the BoD Meeting to Stock Exchange(s), for issue of shares on preferential issue basis and closure of trading window. [However, it is not mandatory as per Reg. 9 read with Sch. B (4) (3) (b) of PIT Reg. 2015]

3. **Update website of Company:**[Ref: Reg. 46(3)(b) read with reg. 30(8) of LODR] [Pdf mode]

The Company has to update its website within 02 working days of change in its contents.

4. **Convene a Board Meeting:**[Ref: Section 174 & SS-1]

The Company has to convene BoD Meeting for passing a board Resolutions for authorization for alteration of Articles of Association (AoA), if required, approval for issue of shares on preferential basis and approval of draft offer letter, evaluation of valuation report, notice of General Meeting/Postal Ballot and cut-off date for sending notice.

5. **Submission of Outcome of BoD Meeting:**[Ref: Reg. 30 read with Stock Exchanges' circulars][Pdf Mode]

The Company has to submit the outcome of BoD Meeting with the Stock Exchange(s), **within 30 minutes/ 03 hours from conclusion of BoD Meeting**. [Amended w.e.f. 12.12.2024]

6. Advertisement in newspapers regarding GM being held through VC/OAVM facility & e-voting facility:[Ref: MCA Circulars dated 05.05.2020, 08.04.2020 & 13.04.2020] [BEFORE SENDING NOTICE]

The Company has to cause public notice by way of an advertisement to be published, **before sending the notice of General Meeting** for the meeting, but at least twenty-one days before the date of general meeting, at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having country-wide circulation.

7. Submission of Newspapers' copies to Stock Exchange(s):[Ref: Reg. 30(6) read with part A(A)(12) of Sch. III read with Annexure-II of SEBI Circular dated 11.11.2024] [Pdf mode]

The Company has to submit copies of newspapers publication, within 12 hours from publication to Stock Exchange(s).

8. Requirement of obtaining Permanent Account Numbers (PAN) of proposed Allottees:[Reg. 160 of ICDR] (Before making an application for seeking in-principle approval from stock exchanges)

The Company has to obtain Permanent Account Numbers (PAN) of the proposed allottees, except those allottees which may be exempt from specifying their Permanent Account Number for transacting in the securities market by the Board.

9. Appointment of Monitoring Agency: [Reg. 162A of ICDR read with BSE & NSE Circulars dated 13.12.2022]

The Company has to appoint **at least one (01)** Credit Rating Agency mandatorily, **if issue size exceeds Rs. 100 Crores** and in any other case, it will be monitored by Audit Committee of the Company.

10. Issue notice of General Meeting/ Postal Ballot:[Ref: Sec. 101, 110 and rule 18, 20 & 22 of Companies (Management and Administration) Rules, 2014 and Reg. 44 of LODR 2015][Pdf mode]

The Company has to issue **not less than clear 21 days' notice(shorter notice, if any)** of General meeting **specifically mentioning the relevant date**, to Members available as on "Cut off" date decided by the Company.**[In case of approval is being obtained through Postal ballot process then, 30 days' notice, including the date of dispatch of notice, is applicable]**

11. Application to Stock Exchange(s) for obtaining in-principle approval: [Ref: Reg. 160(f) of ICDR] [Pdf and XBRL mode]

The Company has to submit an application to Stock Exchange(s) for obtaining in-principle approval, **on the same day** when the notice has been sent in respect of the general meeting seeking shareholders' approval by way of special resolution and generally, Stock Exchanges revert **within T+3 working days** of application. [List of documents are given at the end of this assignment]

12. Submission of Issue Summary Document (ISD) with Stock Exchanges: [Ref: SEBI circular SEBI/HO/CFD/PoD-1/P/CIR/2023/29 dated February 15, 2023- 2nd Phase-for further issue w.e.f -April 03, 2023:][XBRL form]

The Company has to submit Issue Summary Document (ISD) with Stock Exchange(s) **at the time of submitting application** for obtaining in-principle approval for issuing shares on preferential basis.

13. Submission of notice of General Meeting/ Postal Ballot along with explanatory statements to Stock Exchange(s): [Ref: Regulation 30(6) read with part A(A)(12) of Sch. III read with Annexure-II of SEBI Circular dated 13.07.2023][Pdf and XBRL mode]

The Company has to file/submit with Stock Exchange(s), notice of GM/Postal Ballot along with explanatory Statements, within 12 hours of issuance of notice.

14. Update website of Company:[Ref: Reg. 46(3) read with reg. 30(8) of LODR, 2015] [Pdf mode]

The Company has to update its website within 02 working days of change in its contents.

15. Advertisement in newspapers regarding completion of dispatch of notice:[Ref: Sec. 108, 110 and rule 20 & 22 of Companies (Management and Administration) Rules, 2014 read with Reg. 47 of LODR, 2015] [AFTER SENDING NOTICE]

The Company has to advertise in **at least 02 newspapers**, once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated and once in English language in an English newspaper having country-wide circulation, **immediately on completion of dispatch of notice.**

16. Submission of Newspapers' copies to Stock Exchange(s):[Ref: Regulation 30(6) read with part A(A)(12) of Sch. III read with Annexure-18A of SEBI Circular dated 11.11.2024][Pdf mode]

The Company has to submit copies of newspapers publication, within 12 hours from publication to Stock Exchange(s).

17. **Prior intimation of e-voting facility provided through SMS/ Email by listed entities:** [Ref: Chapter VI-C of SEBI Master Circular dated 11.11.2024] [Applicable in case of AGM as per SEBI Master Circular, however, circular of NSDL/ CDSL covers both AGM & EGM]

The depository shall send SMS/ email alerts to the demat account holders, **atleast 02 days prior to the date of the commencement of e-voting.**
[This facilities shall be available to all individual shareholders holding the securities in demat mode]

18. **Convene General Meeting:**[Ref: SS-2]

The Company has to pass special resolution for approval of issue of shares on Preferential Basis.

19. **Submit outcome of General Meeting/ Proceedings of General Meeting or Outcome of Postal Ballot:**[Ref: Reg. 30(6) read with part (A)(13) of Sch. III read with Annexure-18A of SEBI Circular dated 11.11.2024] [Pdf mode]

The Company has to submit the proceedings of General Meeting including brief details of items deliberated and results thereof and manner of approval proposed for certain items (e-voting etc.) **within 12 hours of General Meeting/ Postal Ballot with Stock Exchanges.**

20. **Submission of Voting Results along with Scrutinizer's Report:**[Ref: Reg. 30 read with 44(3) of LODR, 2015 [XBRL mode only]

The Company has to submit voting results along with Scrutinizer's Report, **within 02 working days** from conclusion of its General Meeting/Postal Results to Stock Exchange(s).

21. **Maintenance of complete Record of Private Placement offers in Form PAS-5** [Ref: Sec. 42 (3) read with Rule 14(4) of Companies (Prospectus & Allotment of Securities) Rules, 2014]

The Company has to maintain complete Record of Private Placement offers in Form PAS-5.

22. **Making/ Sending offer to proposed allottees of Private Placement Offer Letter cum application letter/ Letter of Offer in form PAS-04** [Ref: Sec. 42 (3) read with Rule 14(3) of Companies (Prospectus & Allotment of Securities) Rules, 2014]

The Company has to make/ send offer to proposed allottees of Private Placement Offer Letter cum application letter/ Letter of Offer in form PAS-04, **within 30 days of recording the name of such persons.**

23. Allotment of Securities: [Ref: Reg. 170 of ICDR 2018]

The Company has **allot securities** under **preferential issue within 15 days of passing special resolution**. However, any approval or permission by any regulatory authority or the Central Government for allotment is pending, the period of fifteen days shall be counted from the date of the order on such application or the date of approval or permission.

If the allotment of the specified securities is not completed within fifteen days from the date of special resolution, a fresh special resolution shall be passed and the relevant date for determining the price of specified securities under this Chapter shall be taken with reference to the date of the latter special resolution.

24. File/ Submit of e-form SH-7 with RoC: [Ref: Sec. 42 & 62(1)(c) read with Rule 13 of the Companies (Share Capital and Debentures) Rules, 2014] [Pdf mode]

The Company has to file e-form SH-7, with Registrar of Companies (RoC), **within 30 days of passing Special Resolution** in General Meeting/ Postal Ballot for issue of shares on preferential basis. **[Only if Authorised Share Capital of the Company stands revised]**

25. Filing of e-form MGT-14 with RoC: [Ref: Sec. 117 & 179 read with Rule 24 of Companies (Management and Administration) Rules, 2014] [Pdf mode]

The Company has to file e-form MGT-14, with Registrar of Companies (ROC), **within 30 days of allotment of securities** on preferential basis.

26. Issue notice of Board Meeting for fixing of Record date for issue of shares through preferential basis:[Ref: Section 173(3) & SS-1]

The Company has to issue 07 days' notice for fixing of record date for issuing shares on preferential basis.

27. Intimation of Board Meeting for fixation of Record Date:[Ref: Reg.42(1) & (2)] [Pdf mode]

The Company has to intimate **at least 03 working days** (excluding the date of intimation and the record date) before record date scheduled for the preferential issue of shares to Stock Exchange(s). **[List of documents are given at the end of this assignment]**

28. Convene a Board Meeting: [Ref: Section 174 & SS-1]

The Company has to convene BoD Meeting for fixing of Record date for issuing shares on preferential basis.

29. Submission of Outcome of BoD Meeting:[Ref: Reg. 30 read with Stock Exchanges' circulars] [Pdf Mode]

The Company has to submit the outcome of BoD Meeting with the Stock Exchange(s), **within 30 minutes/ 03 hours from conclusion of BoD Meeting.** [Amended w.e.f. 12.12.2024]

30. Intimation of allotment of new ISIN from Depositories (NSDL & CDSL) to Stock Exchange(s): [Pdf mode]

The Company has to intimate regarding the allotment of new ISIN from Depository (NSDL/CDSL), **at least 03 working days** before record date fixed for issuing shares on preferential basis, to Stock Exchange(s).

31. Application for obtaining in principle listing and trading approvals for shares issued on preferential basis to Stock Exchange(s):

The Company has to submit an application or obtaining in principle listing and trading approvals for shares issued on preferential basis under new ISIN, to Stock Exchange(s).

32. Submission of document for Corporate Action to RTA: [After Obtaining In principle Approvals]

The Company has to submit an application along with documents for execution of Corporate Action in Depositories System (NSDL & CDSL), to RTA.

33. Execution of Corporate Action by RTA:

The RTA has to execute corporate action (Debit/ Credit) in Depositories (NSDL & CDSL) System for all eligible members as on record date.

34. File/ submit of e-form PAS-3 with Registrar of Companies (ROC): [Ref: Sec. 42 & 62(1))(c) read with rule 14(2) of the Companies (Share Capital and Debentures) Rules, 2014] [Pdf mode]

The Company has file/ submit e-form PAS-3, **within 15 days of allotment of securities** under preferential basis with RoC.

35. Final application for admission of securities for listing and trading to Stock Exchange(s):[Pdf and XBRL mode]

The Company has to submit an application for admission of securities for listing and trading for shares allotted on preferential basis under new ISIN, to Stock Exchange(s).

Documents required for In-Principle approval prior to issue and allotment of securities (BSE)

1. Covering letter for “In-principle approval” for issue and allotment of Securities on a preferential basis under Regulation 28(1) of the SEBI (LODR), Regulations, 2015.
2. Brief particulars of the proposed preferential issue as per format enclosed as **Annexure I** and the allottee details to be provided in excel sheet as per format enclosed as **Annexure IA**.
3. Certified copy of the resolution passed by the Board of Directors of the company for the proposed preferential issue.
4. Certified True copy of notice of AGM/EGM/ Postal Ballot along with explanatory statement.
5. Where allotment is for Cash /Other than cash.(Self-explanatory)
6. Transaction statement of all the proposed allottee(s) from 90 trading days prior to the relevant date till commencement of lock-in / relevant date, issued by the Depository Participant.
7. In case if the prior holding of the allottee is under pledge with banks/ financial institution(s), company needs to provide an undertaking/ confirmation from the banks/ financial institutions, company and allottee(s) as per format enclosed as **Annexure II**.
8. Certified copy of approval letters/orders of Regulatory Authorities (RBI, CDR, FIPB, BIFR, etc.), if applicable.
9. Confirmation by the Managing Director/ Company Secretary as per format enclosed as **Annexure III**.
10. Certificate from Statutory Auditors/ Practicing Chartered Accountant/ Practicing Company Secretary as format enclosed as **Annexure IV**.
11. Copy of valuation report from an independent registered value wherever applicable in terms of amendment in ICDR regulations dated 14.01.2022.
12. Latest copy of Article of Association (AoA) of the company.
13. Pricing certificate by Statutory Auditor/ Practicing Chartered Accountant/ Practicing Company Secretary as format enclosed as Annexure V.
14. Certified copy of recommendation from a committee of independent directors of the issuer after considering all the aspects relating to the preferential issue including pricing, and the voting pattern of the said committee’s meeting, in case the preferential issue results in change in control of the issuer.
15. NSDL/CDSL confirmation for corporate action for lock in of pre-preferential holdings.
16. Non-refundable processing fees as mentioned below to be paid as per applicable rate through **Online Payment Gateway (via Net Banking Facility) in Listing Centre portal** or through Cheque /DD favoring “BSE Limited”
 - Main Board: 0.03% of the Issue Size, subject to a minimum fee of Rs 3 Lacs and a maximum of Rs. 6 Lacs plus GST.

Documents required for In-Principle approval prior to issue and allotment of securities (NSE)

1. Certified copy of the resolution passed by the Board of Directors of the company for the proposed preferential issue.
2. Certified True copy of notice of AGM/ EGM/ Postal Ballot along with explanatory statement.
3. Confirmations from the Issuer as per the format enclosed in **Annexure I**.
4. Certificate from Statutory Auditors/ Practicing Chartered Accountant/ Practicing Company Secretary. (few details)
5. Transaction statement of all the proposed allottee(s) from 90 trading days prior to the relevant date till commencement of lock-in / relevant date, issued by the Depository Participant.
6. NSDL/CDSL confirmation for corporate action for lock in of pre-preferential holdings.
7. In case if the prior holding of the allottee is under pledge with banks/ financial institution(s), company needs to provide an undertaking/ confirmation from the banks/ financial institutions, company and allottee(s).
8. Certified copy of approval letters/orders of Regulatory Authorities (RBI, CDR, FIPB, BIFR, etc.), if applicable.
9. Copy of valuation report from an independent registered valuer wherever applicable in terms of amendment in ICDR regulations.
10. In case the Articles of Association of the issuer provides for an alternate method of determination of price in case of further issue of capital, which would be higher than the floor price derived through SEBI regulations, then kindly provide the detailed working of the same (e.g. valuation from an independent registered valuer).
11. Certified copy of recommendation from a committee of independent directors of the issuer after considering all the aspects relating to the preferential issue including pricing, and the voting pattern of the said committee's meeting, in case the preferential issue results in change in control of the issuer.

Links of all circulars mentioned under this assignment:

BSE (Prior Issue):	https://www.bseindia.com/downloads1/Preferential_Prior_issue.zip
BSE (Post Issue):	https://www.bseindia.com/downloads1/Preferential_Post_issue.zip
BSE Circular (Monitoring Agency):	https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20221213-47
NSE Circular (Monitoring Agency):	https://nsearchives.nseindia.com/web/sites/default/files/inline-files/NSE_Circular_13122022.pdf
NSE Master Circular dt. 29.04.2024:	https://nsearchives.nseindia.com/web/sites/default/files/inline-files/NSE_circular_290424_0.zip
BSE Master Circular dt. 30.04.2024:	https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20240430-5
BSE Circular dt. 16.02.2023:	https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20230216-2
NSE Circular dt. 16.02.2023:	https://nsearchives.nseindia.com/web/sites/default/files/inline-files/NSE_Circular_16022023_F.pdf
SEBI Circular dt. 15.02.2023:	https://www.sebi.gov.in/legal/circulars/feb-2023/introduction-of-issue-summary-document-isd-and-dissemination-of-issue-advertisements_68057.html
SEBI Master Circular dt. 11.11.2024:	https://www.sebi.gov.in/legal/master-circulars/nov-2024/master-circular-for-compliance-with-the-provisions-of-the-securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-regulations-2015-by-listed-entities_88388.html
SEBI Circular dt. 31.12.2024:	https://www.sebi.gov.in/legal/circulars/dec-2024/circular-for-implementation-of-recommendations-of-the-expert-committee-for-facilitating-ease-of-doing-business-for-listed-entities_90406.html

Thank you so much & best wishes for future

Sharing is caring...

Shree Radhe Krishna...