



**SECURITIES AND EXCHANGE BOARD OF INDIA
PRIMARY MARKET DEPARTMENT
Mittal Court, 'A' Wing, Ground Floor
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August 4, 2000

DIP (Compendium) Circular No. 3

To All Registered Merchant Bankers

Dear Sirs,

Sub: Amendments to SEBI (Disclosure and Investor Protection) Guidelines, 2000

The Board in its meeting held on June 14, 2000 considered and approved amendments to certain provisions of DIP Guidelines pertaining to eligibility norms for companies issuing securities, Promoters' contribution and Lock-in requirements, Contents of offer documents, Pre and post issue obligations of the lead merchant banker, Other issue requirements in eligible sectors and Guidelines on preferential issues. A circular issued in this regard is enclosed. Following are the contents of the circular:

Section A: The definition of net worth has been included in the Chapter I-Preliminary and has been deleted from Chapter II- Eligibility Norms for Companies issuing Securities.

Section B covers the amendments to the guidelines on eligibility norms for public issue by unlisted/ listed companies and offers for sale.

Section C gives the amended guidelines on promoters' contribution and lock in requirements.

Section D gives amendments to the Pre-Issue obligations.

Section E contains amendments to the contents of the offer documents.

Section F covers the amendments to the post issue obligations of the lead merchant banker.

Section G gives the amendments to other requirements of public issue of securities by companies in eligible sectors.

Section H contains the amendment to the Guidelines on advertisements.

Section I gives amended guidelines on preferential issue.

Section J covers amendments to the operational Guidelines.

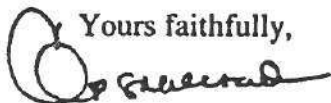
Applicability

This circular shall be applicable to the offer documents filed with the Board on or after August 7, 2000.

Explanation

Section I shall be applicable to the preferential issues for which notice convening the General Meeting of the shareholders for approving such proposals is issued on or after August 7, 2000.

Yours faithfully,



O.P. Gahrotra
Senior Executive Director

Section A: Chapter I- Preliminary

1. After sub clause xix of Clause 1.2 a new sub clause "xix a" shall be added:

"xix a "networth" means aggregate of value of the paid up equity capital and free reserves (excluding reserves created out of revaluation) reduced by the aggregate value of accumulated losses and deferred expenditure not written off (including miscellaneous expenses not written off)."

Section B: Chapter II - Eligibility Norms

1. The existing Clause 2.2. shall be substituted by the following :-

"2.2 - Public Issue by Unlisted Companies

- 2.2.1 An unlisted company shall make a public issue of any equity shares or any security convertible into equity shares at a later date subject to the following:-

- (i) It has a pre-issue networth of not less than Rs.1 crore in three (3) out of preceding five (5) years, with a minimum networth to be met during immediately preceding two (2) years; and
- (ii) It has a track record of distributable profits in terms of section 205 of the Companies Act, 1956, for at least three (3) out of immediately preceding five (5) years.

Provided that the issue size (i.e. offer through offer document + firm allotment + promoters' contribution through the offer document) does not exceed five (5) times its pre-issue networth as per the last available audited accounts, either at the time of filing draft offer document with the Board or at the time of opening of the issue.

- 2.2.2 An unlisted company can make a public issue of equity shares or any security convertible into equity shares at a later date, only through the book-building process if,

- (i) it does not comply with the conditions specified in clause 2.2.1 above, or,
- (ii) its proposed issue size exceeds five times its pre-issue networth as per the last available audited accounts either at the time of filing draft offer document with the Board or at the time of opening of the issue

Provided that sixty percent (60%) of the issue size shall be allotted to the Qualified Institutional Buyers (QIBs), failing which the full subscription monies shall be refunded.

Explanation 1:

- (i) Profits emanating only from the information technology business or activities of the company, shall be considered for the purposes of computation of the track record of distributable profits in following cases:
 - a) for companies in "Information Technology" sector or proposing to raise moneys for projects in "information technology" sector,
 - b) for companies whose name suggests that they are engaged in information technology activities / business, etc. viz. the company's name containing the words 'software, hardware, info, infotech, .com, informatics, technology, computer, information, etc.;
- (ii) In case of partnership firms which have since been converted into companies, the track record of distributable profits of the firm shall be considered only if the financial statements of the partnership business for the said years conform to and are revised in the format prescribed for companies under the Companies Act, 1956 and also comply with the following:
 - (a) adequate disclosures are made in the financial statements as required to be made by the companies as per Schedule VI of the Companies Act, 1956;
 - (b) the financial statements shall be duly certified by a Chartered Accountant stating that:
 - (I) the accounts as revised or otherwise and that the disclosures made are **in accordance** with the provisions of Schedule VI of the Companies Act, 1956; and
 - (II) the accounting standards of the Institute of Chartered Accountants of India(ICAI) have been followed and that the financial statements present a true and fair picture of the firm's accounts.
- (c) the lead merchant banker shall also verify and confirm that the financial statements furnished on behalf of the partnership firm are in accordance with the Accounting Standards prescribed by the ICAI.
- (iii) In case of an unlisted company formed out of a division of an existing company, the track record of distributable profits of the division spun off shall be considered only if the requirements regarding financial statements as specified for partnership firms in clause (ii) above are complied with.

Explanation 2: For the purposes of clause 2.2 above, the term -

- (i) "Three years out of immediately preceding five years", shall mean that at least three (3) audited accounts for a period of not less than thirty six (36) months are available for computation of the minimum track record of three (3) years of distributable profits.
- (ii) "Qualified Institutional Buyer" shall mean -
 - a) public financial institution as defined in section 4A of the Companies Act, 1956;
 - b) scheduled commercial banks;
 - c) mutual funds;
 - d) foreign institutional investor registered with SEBI;
 - e) multilateral and bilateral development financial institutions;
 - f) Venture capital funds registered with SEBI.
- (iii) "Information Technology" shall comprise the following activities:
 - (a) Production of computer software i.e. any representation of instruction, data, sound or image including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of an automatic data processing machine.
 - (b) Information technology services i.e. any service which results from the use of any information technology software over a system of information technology products for realizing value addition and will consist of (I) IT software including data processing services (II) Consumer systems, communication and network services and (III) other IT related services.
 - (c) manufacturing of information technology hardware
 - (d) Manufacturing of information technology products i.e. computer systems, communications and network products and peripherals and subsystems.
 - (e) Manufacturing of information technology components i.e. active and passive electronic components, plastic, metal, non-metal, parts and sub assemblies of IT products.
 - (f) computer education and training
 - (g) computer maintenance
 - (h) computer consultancy
 - (i) e-commerce / internet related activities

2. The existing clause 2.2.3 shall be substituted by the following:

2.2.3 Offer for sale

2.2.3.1 A company, whose equity shares or any security convertible at later date into equity shares are offered through an offer for sale, shall comply with the provisions of Clause 2.2.

3. The existing clause 2.3 shall be substituted by the following :-

2.3 Public Issue by Listed Companies

2.3.1 A listed company shall be eligible to make a public issue of equity shares or any security convertible at later date into equity share.

Provided that the issue size (i.e. offer through offer document + firm allotment + promoters' contribution through the offer document) does not exceed five (5) times its pre-issue networth as per the last available audited accounts either at the time of filing draft offer document with the Board or at the time of opening of the issue.

2.3.2 A listed company which does not fulfil the condition given in the proviso to clause 2.3.1 above, shall be eligible to make a public issue only through the book building process.

Provided that sixty percent (60%) of the issue size shall be allotted to the Qualified Institutional Buyers (QIBs), failing which the full subscription monies shall be refunded.

2.3.3 A listed company which has changed its name so as to indicate that it is a company in the information technology sector as defined in Clause 'iii' of Explanation 2 of Clause 2.2.1, during a period of three years prior to filing of offer document with the Board, shall comply with the requirements of Clause 2.2 for unlisted companies, before it can make a public issue of equity shares or securities convertible at a later date into equity shares."

4. In clause 2.4.1 the words "clauses 2.2.1, 2.2.2 and 2.3.1" shall be replaced by the words "clauses 2.2 and 2.3"

5. The Explanation 1) appearing after clause 2.4.1 shall be deleted.

Section C: Chapter IV – Promoters' Contribution and Lock-in requirements

1. In Clause 4.9.1 after the words "the issue opening date" the following shall be added :

"which shall be kept in an escrow account with a Scheduled Commercial Bank and the said contribution / amount shall be released to the company along with the public issue proceeds."

2 After clause 4.9.1 and before the existing proviso a new proviso shall be added:

"Provided that, where the promoters' contribution has been brought prior to the public issue and has already been deployed by the company, the company shall give the cash flow statement in the offer document disclosing the use of such funds received as promoters' contribution".

3. In the existing proviso to Clause 4.9.1, in the first line after the word "Provided", word "further" and after the words "on pro-rata", the word "basis" shall be added.

4. The existing Clause 4.14 shall be substituted by the following new clause :

"4.14 Lock-in of pre issue share capital of an unlisted company

4.14.1 The entire pre-issue share capital, other than that locked-in as promoters' contribution, shall be locked-in for a period of one year from the date of commencement of commercial production or the date of allotment in the public issue, whichever is later.

4.14.2 Clause 4.14.1 shall not be applicable to the pre-issue share capital

- i) held by venture capital funds registered with the Board. However, the same shall be locked-in as per the provisions of the **SEBI (Venture Capital Funds) Regulations, 1996** and any amendment thereto.
- ii) held for a period of at least one year at the time of filing draft offer document with the Board and being offered to the public through offer for sale."

5. In Clause 4.12 the words "3 years" wherever they appear shall be substituted by the words "one year".

6. The existing clause 4.14 A shall be substituted by the following new clause:

"4.14 A Lock-in of securities issued on firm allotment basis

Securities issued on firm allotment basis shall be locked-in for a period of one year from the date of commencement of commercial production or the date of allotment in the public issue, whichever is later."

Section D : Chapter V – Pre- Issue Obligations

1. In the clause 5.3.4.1, the word "companies" appearing before the words "or Chartered Accountants" shall be replaced with the words "Company Secretary".
2. The existing Clause 5.6.2 shall be substituted by the following :-

"5.6.2. The lead merchant banker shall,

- i) while filing the draft offer document with the Board in terms of Clause 2.1, also file the draft offer document with the stock exchanges where the securities are proposed to be listed
- ii) make copies of draft offer document available to the public
- iii) obtain and furnish to the Board, an in-principle approval of the stock exchanges for listing of the securities within 15 days of filing of the draft offer document with the stock exchanges."

Section E: Chapter VI - Contents of the offer document

1. In the sub-clause (xi) of the clause 6.2.1.2 after the word "is proposed" following shall be added:

"and the details of in-principle approval for listing obtained from these stock exchanges."

2. The sub clause (b) of clause 6.5.6.1 shall be modified to read as follows:

"(b)- that all steps for completion of the necessary formalities for listing and commencement of trading at all stock exchanges where the securities are to be listed are taken within 7 working days of finalisation of basis of allotment."

3. After existing clause 6.5.7.1, a new clause 6.5.7.2 shall be added :-

"6.5.7.2 - The offer document shall contain a statement of the Board of Directors of the issuer company to the effect that -

- (i) the utilisation of monies received under promoters' contribution and from firm allotments and reservations shall be disclosed under an appropriate head in the balance sheet of the company indicating the purpose for which such monies have been utilised.
- (ii) the details of all unutilised monies out of the funds received under promoters' contribution and from firm allotments and reservations shall be disclosed under a separate head in the balance sheet of the company indicating the form in which such unutilised monies have been invested".

4. The existing Clause 6.12 shall be substituted by the following:

~~6.12. Projections~~

No forecast or projections relating to financial performance of the issuer company shall be given in the offer document."

5. After clause 6.13.1, new clause 6.13.2 shall be added which shall read as follows:

6.13.2 (i) The issuer company and the lead merchant banker shall provide the accounting ratios as mentioned in clause 6.13.1 above to justify the basis of issue price.

Provided that, the lead merchant banker shall not proceed with the issue in case the accounting ratios mentioned above, do not justify the issue price.

(ii) In case of book built issues, the offer document shall state that the final price has been determined on the basis of the demand from the investors."

6. After sub clause (i) to clause 6.27, new sub clauses (ii) and (iii) shall be added-

"(ii) The issuer company and the lead merchant banker shall provide the accounting ratios as mentioned in sub clause (i) to clause 6.27 above to justify the basis of issue price.

Provided that, the lead merchant banker shall not proceed with the issue in case the accounting ratios mentioned above, do not justify the issue price.

(iii) In case of book built issues, the offer document shall state that the final price has been determined on the basis of the demand from the investors."

7. Clause 6.45.8 shall be substituted by the following:-

"6.45.8 - The accounting ratios as mentioned in clause 6.13.1.

Provided that, the lead merchant banker shall not proceed with the issue in case the accounting ratios mentioned above, do not justify the issue price."

Section F: Chapter VII - Post Issue Requirements

4. Following new Clauses 7.7.1 and 7.7.2 shall be added :

"7.7.1 The lead merchant banker shall ensure that the despatch of share certificates / refund orders / cancelled stock invests and demat credit is completed and the allotment and listing documents submitted to the stock exchanges within 2 working days of finalisation of the basis of allotment.

7.7.2 The post issue lead manager shall ensure that all steps for completion of the necessary formalities for listing and commencement of trading at all stock exchanges where the securities are to be listed are taken within 7 working days of finalisation of basis of allotment."

2. The existing Clauses 7.7.1 to 7.7.5 shall be re-numbered as 7.7.3 to 7.7.7.

Section G: Chapter VIII - Other Issue Requirements

1. In Clause 8.3.4, the words "information technology sector" shall be substituted by the words "in any of the eligible sectors"

2. After Clause 8.3.4, Explanations 1 & 2 shall be added :

"Explanation 1 : For the purpose of the above clause company in the eligible sectors shall mean :

- i. company deriving 75% or more of their turnover from information technology activities during the two years immediately preceding the date of filing the offer document with the Board
- ii. company deriving 75% or more of their turnover from media/entertainment activities during the two years immediately preceding the date of filing the offer document with the Board
- iii. company deriving 75% or more of their turnover from telecommunication activities during the two years immediately preceding the date of filing the offer document with the Board

"Explanation 2 : For the purposes of Explanation 1 –

(a) "Information Technology" shall have the same meaning as in clause (iii) of Explanation 2 to Clause 2.2.

(b) "Media/Entertainment " shall comprise:

- i) production of television programmes
- ii) production of films - corporate films, feature films, documentary films etc.
- iii) production of radio programmes
- iv) production of print publications like books, newspapers, magazines, journals etc.
- v) entertainment websites offering music, films etc.
- vi) news websites
- vii) production of music
- viii) event management
- ix) running of television channels
- x) running of radio stations/channels
- xi) production of Advertisements

(c) "Telecommunication " shall comprise:

- i) Internet Service providers
- ii) Providers of telephony
- iii) Television/internet cable networks
- iv) Providers of internet and telephony Gateways
- v) Producers of communication software
- vi) Producers of internet networking hardware
- vii) Providers of Satellite services "

Section H: Chapter IX- Guidelines on Advertisement

1. In sub clause b of clause 9.1.12 the words "point 9 size" shall be replaced with words "point 7 size".

Section I: Chapter XIII - Guidelines for Preferential Issues

1. After sub Clause 13.1.3, a new clause 13.1A shall be added :

"13.1A The explanatory statement to the notice for the general meeting in terms of section 173 of the Companies Act, 1956 shall contain -

- (i) the object/s of the issue through preferential offer,
- (ii) intention of promoters/ directors/ key management persons to subscribe to the offer,
- (iii) shareholding pattern before and after the offer,
- (iv) proposed time within which the allotment shall be complete
- (v) the identity of the proposed allottees and the percentage of post preferential issue capital that may be held by them.

2. After sub Clause (b) of Clause 13.3.1, a new sub clause (c) shall be added:

"13.3.1.(c) In addition to the requirements for lock in of instruments allotted on preferential basis to promoters/ promoter group as per clause 13.3.1 (a) and (b), the instruments allotted on preferential basis to any person including promoters/promoters group shall be locked-in for a period of one year from the date of their allotment except for such allotments on preferential basis which involve swap of equity shares/ securities convertible into equity shares at a later date, for acquisition."

3. The existing sub Clause (c) of Clause 13.3.1 shall be renumbered as sub Clause (d).

4. (a) In Clauses 13.4.1(a) and 13.5.1 (a), the word "DFT" shall be substituted by the word "company".

(b) After Clause 13.4.1, a new clause 13.4.2 shall be added :

“13.4.2 - The equity shares and securities convertible into equity shares at a later date, allotted in terms of the above said resolution shall be made fully paid up at the time of their allotment.

Provided that payment in case of warrants shall be made in terms of clause 13.1.2.3 above.”

(c) The existing sub clause (b) of clause 13.4.1 shall be renumbered as clause 13.4.3.

5. After clause 13.5, a new clause 13.5A shall be added :

“13.5A The details of all monies utilised out of the preferential issue proceeds shall be disclosed under an appropriate head in the balance sheet of the company indicating the purpose for which such monies have been utilised. The details of unutilised monies shall also be disclosed under a separate head in the balance sheet of the company indicating the form in which such unutilised monies have been invested”.

6. In clause 13.7.1 (ii) (b) the words “clause 6.4.2 (m) “ shall be replaced with the words “Explanation I and II , Clause 6.4.2.1”

Section J: Chapter XVI – Operational Guidelines

1. The Clause 16.1.2(b) shall be modified to read as follows:

“16.1.2 (b) The lead merchant banker shall make ten (10) copies of the draft offer document available to the dealing office of the Board, three (3) copies to the Primary Market Department, SEBI, Head Office and 25 copies to the stock exchange(s) where the issue is proposed to be listed.”

2. The existing Clause 16.1.3 shall be modified to read as follows:

“ 16.1.3 (a) The lead merchant banker shall submit the draft offer document on a computer floppy to the dealing office of the Board and to the Primary Market Department, SEBI, Head Office, as specified in Schedule XXIII.

16.1.3 (b) In case of book built issues the lead merchant banker shall submit a printed and soft copy on a computer floppy, of the draft offer document incorporating the Board's observations and a printed copy of bid cum application form to the Primary Market Department, SEBI, Head Office at least five days before opening of bidding.”

3. In the existing clause 16.1.5 after words "the following details" and before the words "certified as correct" the words "about themselves" shall be inserted. The sub clauses (vii) to (xiii) of existing clause 16.1.5 shall be deleted. The existing clause 16.1.5 shall be re-numbered as 16.1.5 (a).

4. Two new clauses 16.1.5 (b) and 16.1.5 (c) shall be added after 16.1.5 (a) :

"16.1.5(b) The following details about the issuer company certified as correct shall be furnished by the lead merchant banker along with their forwarding letter while filing offer documents for public/ rights issue/ buyback/ takeovers:

(i) whether any promoter/ director/ group /associate company/entity of the issuer company and/or any company/entity with which any of the above is associated as promoter/ director/ partner/ proprietor, is/was engaged in securities related business and registered with SEBI.

(ii) If any one or more of these persons/entities are/ were registered with SEBI, their respective registration numbers.

(iii) If registration has expired, reasons for non renewal.

(iv) Details of any enquiry / investigation conducted by SEBI at any time.

(v) Penalty imposed by SEBI (Penalty includes deficiency/warning letter, adjudication proceedings, suspension / cancellation / prohibitory orders)

(vi) Outstanding fees payable to SEBI by these entities, if any.

16.1.5 (c) The draft and final offer documents submitted to the Board on computer floppies as per the clause 16.1.3 and 16.1.4(c) shall be accompanied by the information as per format in Schedule XXIII.A."

5. Clause 16.2.1 shall be deleted.

Schedule XXIII A
(Clause 16.1.3 and 16 1.4 (c))

**INFORMATION TO BE SUBMITTED WITH SOFT COPY OF DRAFT AND
FINAL OFFER DOCUMENTS**

1.	Soft copy submitted by:	
2.	Content Title:	
3.	Whether the Documents are in HTML Format?	YES/NO
4.	Whether the tabular data in the HTML format are in order?	YES/NO/N.A.
5.	Whether the Sr. Numbers of paragraph/ points are in order and matches with the printed copy?	YES/NO/N.A.
6.	Whether the alignments of all paragraphs are in order?	YES/NO
7.	Whether all relevant image files, if any are available in the floppy?	YES/NO/N.A.
8.	Whether the contents of the HTML format and Hard copy of the document have been compared and found to be in order?	YES/NO
9.	Whether the letter of confirmation for the point no. 8 has been enclosed?	YES/NO
10.	Whether the spacing between lines and paragraphs is uniform?	YES/NO
11.	Remarks, if any	

Prepared by:

Verified by

Date:

(For office use only)

FOR THE USE OF DIVISION/DEPARTMENT CONCERNED

Date of receipt of floppy:

RNI No: _____

Whether the contents of floppy are prima facie in Order: Yes/No

Secretary

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Date:

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The contents on the net were verified and found to be prima facie in order.