

Role of a Company Secretary in IPO

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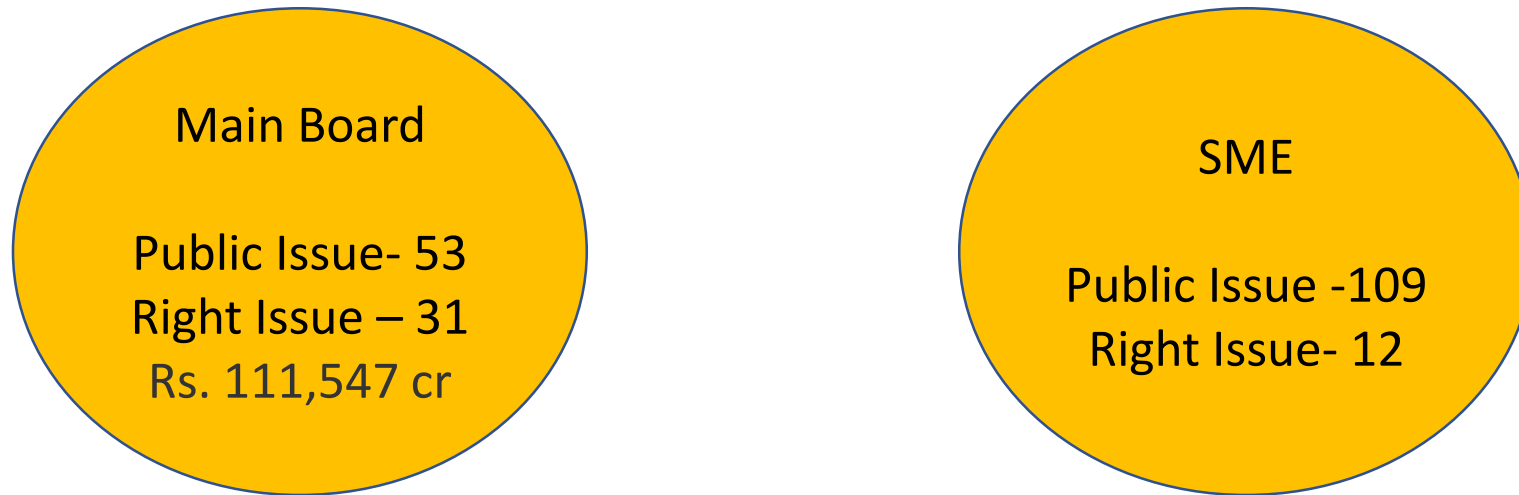
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WHAT IS FOR CS & PRACTICING CS

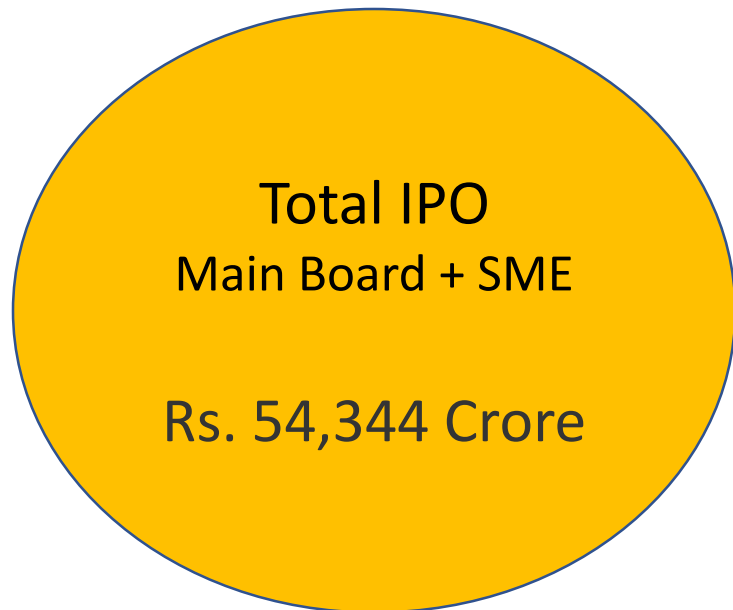
- When a company offers its securities to the public for the first time, the process is referred to as an initial public offering (IPO) and the company is said to 'go public'. CS in employment plays the most important and critical role in entire process of IPO.
- Should there be no experienced in-house company secretary, the company normally retain, amongst other professionals such as legal advisers and reporting accountants for the IPO, an experienced or senior Company Secretary.

2021-22 statistics



The largest SME IPO was of Rachana Infrastructure (Rs 72 crore).

2022-23 statistics



In 2022-23 ₹ 20,557 crore which is 39 % cent of the total amount raised was by LIC alone, without which the IPO fundraising would have been just ₹ 33,787 crore

Yet, FY2022-23 is still the third highest in terms of IPO fund-raise

WHAT'S IN THE PIPELINE

IPO pipeline remains strong

with **54 companies** proposing to raise a huge **₹ 76,189 crore** holding Sebi approval

and

19 more companies looking to raise about **₹ 32,940 crore**, are awaiting the

regulator's nod.

RECENT TRENDS IN CAPITAL RAISED THROUGH PUBLIC ISSUES

Sr. No.	Financial Year	IPOs (incl. SME IPOs)	FPOs (incl. SME IPOs)	OFS	Total (All amount in Crores)
1	2021-22	Rs. 112,349	Rs. 4314	Rs. 11,513	Rs. 128,176
2	2020-21	Rs. 31,512	Rs. 15,029	Rs. 28,440	Rs. 74,981
3	2019-20	Rs. 20,786	Rs. 35	Rs. 17,326	Rs. 38,147
4	2018-19	Rs. 16,340	Rs. 0	Rs. 21,686	Rs. 38,026

Source: Prime Database

PROSPECTUS FILED WITH ROC IN APRIL 2023

03 April 2023- Avalon Technologies Limited

13 April 2023- Global Surfaces Limited

WHY IS IT A CRITICAL CORPORATE EVENT

It is a transformation of an Organisation with reference to
People, Process, Practice, System & Culture



Pre- IPO Home work

- Financial Stability
- Scalability
- Approval of Investors & alignment with the Management Team
- Governance Practices
- Setting up the Processes & MIS
- Technology Automation
- Internal Control
- Cultural Changes
- Risk Management
- ESG
- Investor Relationship

Role of CS- In-House Gatekeeper

However, not until recent years following the amendments to certain regulations, and in particular, the Companies Act 2013 & Listing Regulations, has the company secretary had to perform such a crucial role as an independent in-house “gatekeeper”.

- Acting as a confidential sounding board to the chairman, ED . NED and ID
- Taking a lead role in managing any difficult inter-personal issues on the Board
- Advising the Board on potentially enhancing existing governance practices
- Acting as a primary point of contact for advice & guidance in the organization
- Acting as the “conscience of the company”
- Ensuring Compliances of all laws, code and policies
- Ensuring that the Board is fully aware of its responsibility
- Providing an interface between the Board and senior management
- building “firewalls” in the organization for information flow and its use

Types of Public Issue

Primary IPO

Issuance of new shares to the public

Offer for Sale (OFS)

Sale of shares by existing shareholders to the public

Uniparts India Limited

Mixed IPO

Combination of issuance of new shares &

Sale of shares by the existing shareholders



Best Performing Sectors in India



What is the need

- Product Development
- Infrastructure
- Inorganic Growth by acquisition
- Working Capital
- Repayment of Debt
- Going Global
- Marketing and retention of staff
- Backward or forward integration

Stages

1. Business Plan
2. Pre-IPO (Setting up House in Order for LDD)
3. Appointment of Merchant Bankers & other Intermediaries
4. Marketing Strategy
5. Various Approach
6. Due Diligence
7. Offer Document
8. AD Agency and Investor Relations Firm
9. Road shows, Pricing
10. Opening of Issue
11. Listing & Trading



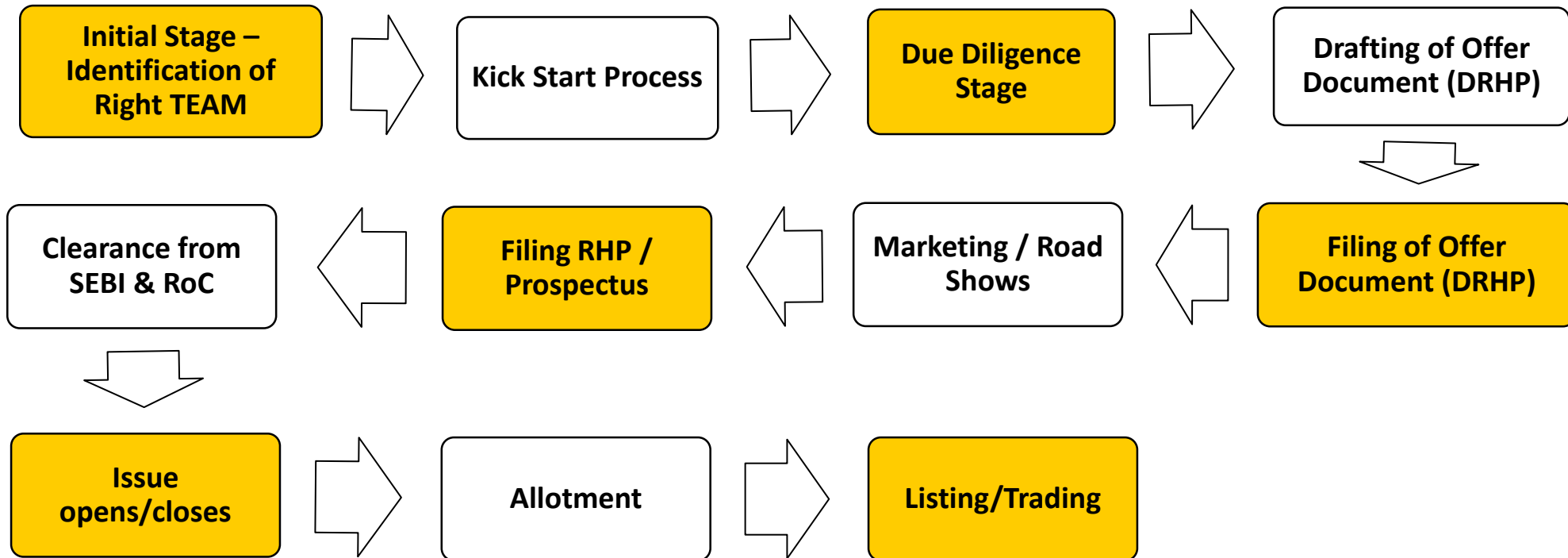
Various Acts /Regulations and Disclosures

1. The Companies Act, 2013
2. The SCRA, 1956
3. The SEBI Act, 1992 read with ICDR, LODR, SBER & SE, PIT
4. The Depositories Act 1996
5. The FEMA, 1999- NDI, ODI
6. Sector-Specific Acts, Rules & Regulations
7. Labour & Taxation Laws
8. Reg- S of Securities Exchange Commission of USA, if any



Right TEAM at the Right TIME

Process



Intermediaries

Issuer

- Listed company
- Unlisted company

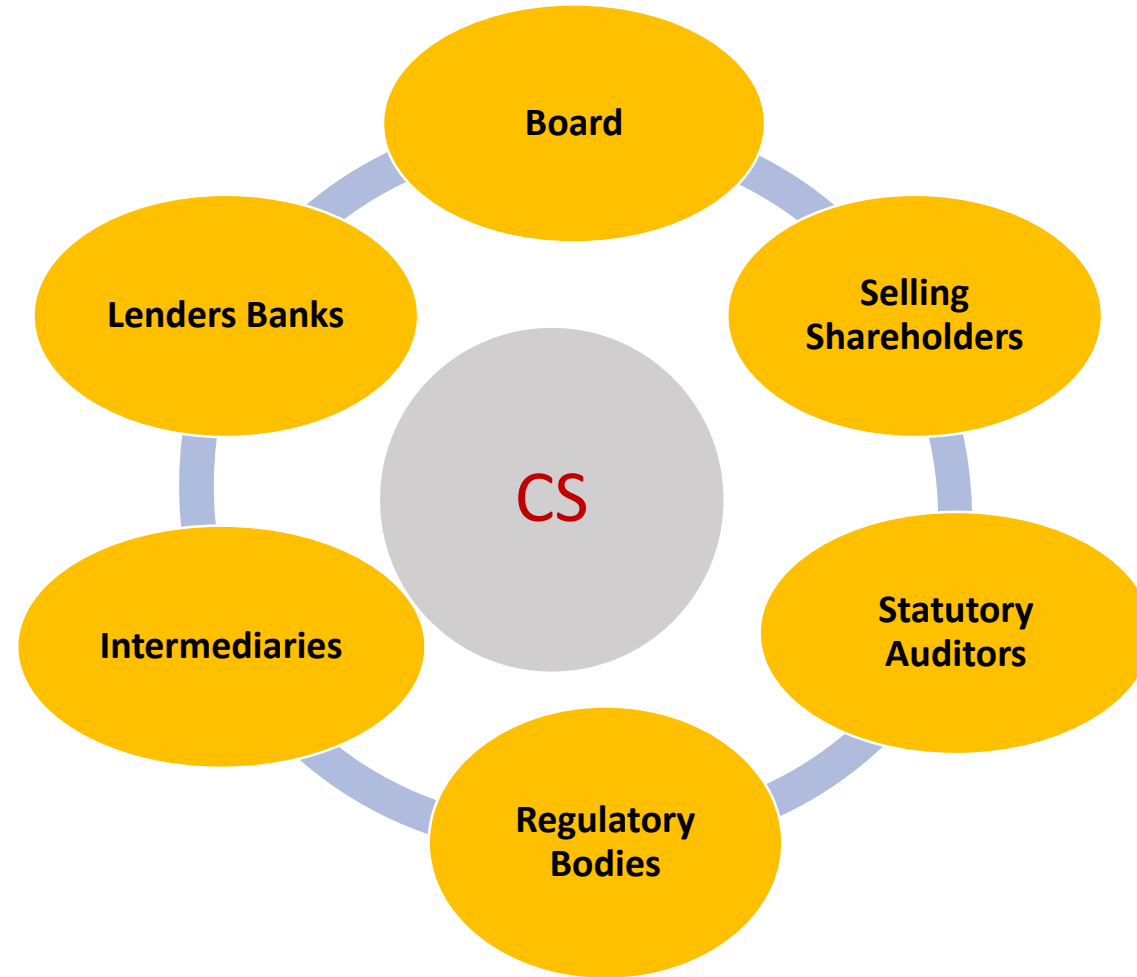
Intermediaries

- Merchant Banker/ Legal Counsel
- Syndicate Members/ Industry Research
- Underwriters/ Credit Rating Agency
- Registrar, Printer, Ad Agency
- Depositories & Stock Exchange

Investors

- Institutional Investor
- QIB and HNI
- Retail

Parties with whom CS need to deal with for IPO process



Business Review by BRLM

- Brief introduction of the Board of Directors, KMP & Management Team
- Conducting SWOT Analysis
- Market Share
- Organization Chart
- Key Milestones
- Awards / Recognitions
- Endeavors for growth & expansion
- Objective of the IPO



Due Diligence

Checklist for Due Diligence

1. Corporate Matters
- 2. Capital Structure**
3. Object of the Issue
- 4. Risk Factors**
5. Management Discussion & Analysis (MDA)
6. About the Company
7. Our Management
8. Promoter & Promoter Group
9. Subsidiaries



Due Diligence

Checklist for Due Diligence

9. Government Regulations & Filing
10. Financial Indebtedness, Charges
11. Movable & Immovable properties
12. IPR
- 13. Litigation**
14. Insurance of assets and D & O
15. Human Resources
16. Miscellaneous



Preparatory Steps prior to Public Issue – Set Your House In Order

1. Eligibility- Reg 6 (1) or 6(2) of ICDR 2018
2. MoA & AoA (Removal of Restrictive Clauses or Special Rights, if any)
3. Conversion into a Public Company (in case the issuer is a Private Company)
4. Dematerialization of shares, Capital History, Revaluation Reserves, Bonus
5. Review of Accounting policies and related matters
6. Review of Auditor Qualifications



Preparatory Steps prior to Public Issue – Set Your House In Order

7. Review of all important litigations by or against the issuer company
8. Insurance / Approvals & Licenses- Up to date
9. Compounding of any violations/ non-compliances
10. Formulation of Business Plan, Remuneration to the management
11. Delegation of work amongst team members and various intermediaries
12. Review of Profile of all Directors & KMPs- Not disqualified/ debarred/ under caution list



Preparatory Steps prior to Public Issue – Set Your House In Order

13. Identification of Promoters/ Promoter Group – CA, ICDR & LODR
14. Identification of Group Companies / Material Subsidiaries
15. Identifying the status of various IPR
16. Identifying Significant Beneficial Owner (SBO)
17. Establishment of Internal Controls
18. Exemption application (No identifiable promoter, relatives of promoters)



Preparatory Steps prior to Public Issue – Set Your House In Order

19. Drafting of various Codes and Policies – around 18-20 minimum
20. Ensuring compliance with Corporate Governance – ID, Committee, ToR
21. ESOP in compliance with SEBI Regulations
22. RPT details / CSR compliances
23. Website review
24. Working of Promoters Contribution & Lock In
25. Role of each Intermediaries and EL with them





Post Kick Start Process

Creation of VDR
(Virtual Data Room)

Populating of Data
(Section wise) in VDR

Obtain Standard
Certificates/ Consents,
NOCs from lenders .

Obtain approval of IPO
Committee/ Board /
Shareholders

Agreements with
Intermediaries

Industry Report

Restatement of
Financials as per
Ind-AS

Certificates / Deliverables
from Auditors / ICA
(must be Peer Reviewed)

Draft Red Herring
Prospectus
(DRHP)

Standard Certificate/ Undertaking/ Consents

- The Issuer Company will dedicate a team to create a Virtual Data Room (VDR) and to populate section-wise data in the VDR as per the requirements of the law firm
- Standard Certifications from the following:-- **Prepare Deal Tracker**
 - Promoters and Promoter Group
 - Promoter Entities
 - Directors and Key Managerial Personnel
 - Selling Shareholders
 - Subsidiaries/ Associates / Joint Ventures
 - Group Companies

Standard Certificate/ Undertaking/ Consents

Company Certificate

- About Promoters
- About KMP
- About Investor Grievances
- About Loans and advances
- About Corporate Governance
- About subsidiaries, JV
- About eligibility for public issue



Standard Certificate/ Undertaking/ Consents

Company Undertaking & Confirmation

- Advertisement
- In relation to Stock Exchanges

Company DD Certificate

- Capital
- Promoter
- Group/ subsidiaries
- Approval and license
- Loans & Advances



Standard Certificate/ Undertaking/ Consents

Standard Consents

- Lead Manager BRLMs
- Bankers to the Issue/ Syndicate Members
- Registrar to the Offer
- Legal Advisors/ Auditors/ ICA/ KMPs
- Escrow Collection Bank/ Monitoring Agency/ Share Escrow agent



No Objection Letters

- Creditors
- Lenders



Industry Report/ Grading Process

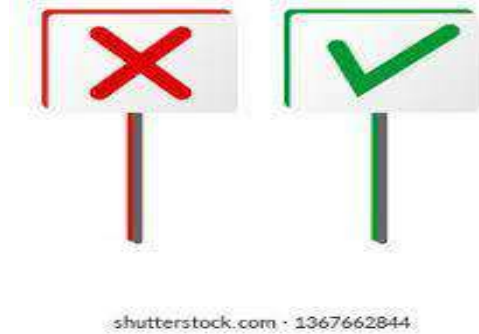
- Credit Rating Agencies
- Discuss with management
- Visit to company's locations
- Meeting ED and ID
- Analytical Assessment Report
- Discussion with core management team



Board / Shareholders approval

Approval of the Board & Shareholders

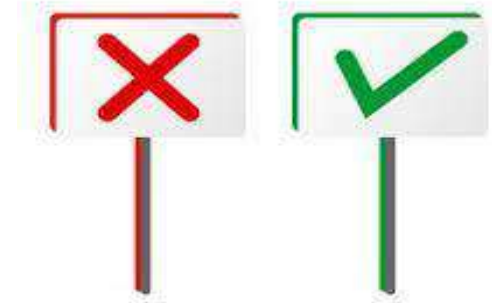
- Issue of shares to the Public (Fresh Issue, OFS, Hybrid)
- Alterations in MoA & AoA, if any
- Set-up an IPO committee
- Reconstitute Board of Directors with ID/ Women Director
- Appoint CS & Compliance Officer
- Establish/reconstitute Committees and adopt their Terms of Reference
- Revise or adopt applicable Codes and Policies
- Appoint BRLM, Law Firm/s and other key intermediaries
- Authorize directors to execute engagement letters with the intermediaries



Board / Shareholders approval

Approval of the Board & Shareholders

- Increase in Authorized Share Capital, if any
- Alteration of Object Clause if required
- Increase in powers of Board u/s 180
- Amendment to ESOP and / or Setting up new ESOP, if any
- Increase in Investment limit for NRI/ FPI
- Appointment of Statutory Auditors or ICA for certificates
- Identification of Designated and Connected Persons for PIT
- Approval of Materiality for disclosure in DRHP about Group Company, Litigation & Creditors
- Revision in sitting fees or remuneration to ED or Non ED / ID etc



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Various Agreements

▪ Shareholders Agreement

Offer Agreement

For OFS- Share Escrow Agreement

Underwriting Agreement/ Syndicate Agreement

Stock Exchanges Agreement/ Cash escrow and sponsor bank agreement

Registrar Agreement/ Ad Agency Agreement

Agreement with Monitoring Agency

Restated financial information

SEBI (ICDR) Regulations, 2018

The financial information should be restated to ensure consistency in the presentation, disclosures, and accounting policies for all the periods presented in line with that of the latest financial year/Interim period.

Such restated financial statements are to be prepared based on the Schedule III of the Companies Act, 2013 for a period of 3 years (or if the company is not older than 3 years than the period of its existence) including an interim period.

Restated financial information



- Audited and certified by the statutory auditors
- Who holds a valid certificate issued by the Peer Review Board of ICAI
- It shall not be >6 months old

Restated financial information

The **stub period should not end up to a date earlier than 6 months** of the date of filing of the draft offer document/ offer document.

For example, for a Company with a **March year-end**, if the company is filing DRHP **after 30 September**, the company will be required to present financial information for the stub period.

The financial statements for stub period should include all those disclosures required to be presented for annual financial statements to the extent applicable. However, the regulations exempt the issuer company from presenting the comparatives for the stub period in the restated financial statements

Restated financial information

Ind AS Adjustments

1. Impact on Profitability
2. Impact on Net worth
3. Impact on Valuation



Ind AS financials

- enhances the credibility of the Company
- It facilitates a comparison of the company's performance with its peers/competitors.

Auditors/ ICA Deliverables

Restated Financial Statements (IND AS) for the preceding 3 FY & stub period

- Consent letter for naming the Auditor in the Offer Document
- Peer Review Certificate
- Certificate for eligibility under SEBI (ICDR), 2018
- Statement of Possible Special Tax Benefits available to the Company, Material Subsidiaries and Company's Shareholders

Auditors/ ICA Deliverables

5. Certificate on Corporate Governance,
6. Related Party Transactions,
7. Identification of Material Subsidiaries,
8. Litigations,
9. Loans & Advances,
10. ESOP Scheme,
11. Financial Indebtedness,
12. Group Companies,
13. Auditors Qualifications, Reservations & Adverse Remarks,
14. Policies

Auditors/ ICA Deliverables

15. Capitalisation Statement
16. Certificate on basis of Offer Price
17. No material Development
18. Confirmation of acquisition and divestment
19. Outstanding due to MSME Creditors
20. Non payment of statutory Dues and contingent liabilities
21. Reservation, Qualification, and adverse remarks of Auditors
22. Change in accounting policies
23. Details of acquisition and cost of acquisition of shares
24. No material Fraud

Auditors/ ICA Deliverables

25. Promoters contribution

26. Dividend

27. Share Capital built up

28. Tax litigation, if any

29. Remuneration paid to Directors and KMPs

30. Certificate on SEBI Order 2015

31. Certificate on SEBI Order 2020

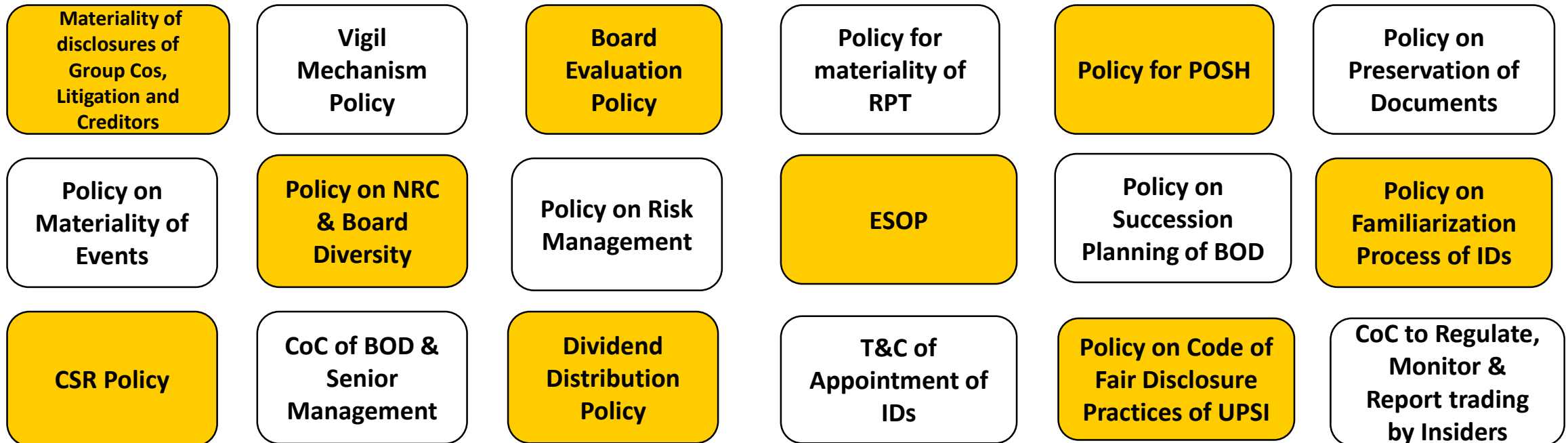
32. Certificate on Rejection Criteria under the SEBI General Order(s) relating to financial matters

Role of Company Secretary in Public Issue --Deliverables

1. Preliminary Due Diligence with Legal Counsel and reply to Requisition List
2. Identification of pending litigation of Promoters, Directors, KMPs, Subsidiaries, and Associates and update MIS tracker
3. Preparing Promoter Matrix for identification of Promoters and Promoter Group
4. Organization Structure and
5. Composition of Board & its Committees

Role of Company Secretary in Public Issue Deliverables

6. Drafting Codes & Policies for Corporate Governance / for Disclosure in DRHP:



Role of Company Secretary in Public Issue Deliverables

7. Ensuring conformity with **Corporate Governance**
8. Make available supporting documents in the **VDR (Virtual Data Room)** in co-ordination with other departments of the Issuer Company.
9. Arrange **standard Certifications / Undertaking**
10. **ESOP** to be in compliance with SEBI (Share Based Employee Benefits & Sweat Equity) Regulations, 2021
11. Assisting **Statutory Auditor** in issuing deliverables

Role of Company Secretary in Public Issue Deliverables

12. Review of each **Risk Factor** (internal and external) and discuss with Board and Management, review DRHP and **Circle Ups**, review the **Legal Opinion of Counsel** of subsidiaries/ JV
13. Continual disclosure to all **Statutory & Regulatory Authorities**
14. Application for **In-Principle approval of** Listing with Stock Exchanges along with fees
15. Advising the Issuer Company along with other intermediaries in resolving the **comments/observations issued by SEBI** on the Draft Red Herring Prospectus (Draft Offer Document)
16. Preparing details for CFD (**Corporate Finance Department**) and processing fees

Role of Company Secretary in Public Issue Deliverables

17. Issuance of Corporate Governance Certificate under SEBI (Listing Obligations & Disclosure Requirements) Regulations, 2015 w.r.t. compliance of the following:

Composition of Board of Directors	Audit Committee & its Composition	NRC & its composition	Stakeholders Relationship Committee
Risk Management Committee	Meetings of BOD & its Committees	RPTs & Compliance with RPT norms	Material Subsidiaries
Obligations w.r.t. Independent Directors	Obligations w.r.t. Senior Management	Obligations w.r.t. Promoters, Directors & KMPs	Policies & Website Disclosures

Pre Public issue Placement – Marketing & Roadshows

18. Assist for Road shows by Promoter and Management team with **PPT, Q & A**, meeting Fund Managers and Equity Analysts
19. **Filing Red Herring Prospectus with Registrar of Companies**
20. List out all **Material Documents** to be kept ready for inspection as mentioned under DRHP
21. Filing of various **Forms with RoC**
22. Coordination with **RTA and DP**

Website

- **Consistent with the disclosures** in the DRHP, RHP, and Prospectus;
- **No financial or operating forecasts** or share valuation **opinions**.
- **Sanitization** by legal counsel before making it live



Pricing of the Public Issue – Fixed Price or Book Building Process

- **Floor Price (Minimum) and Cap Price (Highest Price)** Range of 20% to be announced
- For the **bidding process**, the investors have to place their bids as per the company's quoted Lot price, which is the minimum number of shares to be purchased.
- Public Issue will remain open **for 3-5 days** , Investors can avail the opportunity of **revising their bids within this period**.
- After completion of the bidding process, the company will determine the **Cut-Off price**, which is the **final price at which the issue will be sold**.

Allotment of Shares

- Finalization of Public Issue price
- Finalization of the **Basis of Allotment** and number of securities to be allotted to each investor
- In case of over-subscription, partial allotments will be made to the investors and excess monies will be refunded.
- In **about 7 days' time, the Registrar of the issue finishes** and confirms allotment to successful bidders
- The securities are usually allotted to the bidders **within 10 working days** of the last bidding date.
- **Public Announcement**

Indicative Timeline for Public Issue

- | | | |
|--|---|-------|
| ➤ Board Meeting to approve Public Issue | - | T |
| ➤ Kick off Meeting with BRLM | - | T+5 |
| ➤ Research Presentation | - | T+10 |
| ➤ Due Diligence & Drafting | - | T+60 |
| ➤ Publication of Research Report | - | T+61 |
| ➤ File DRHP with SEBI & Stock Exchange | - | T+62 |
| ➤ Receipt of In-principle approval from Stock Exchange | - | T+77 |
| ➤ Receipt of SEBI's comments on DRHP | - | T+122 |

Indicative Timeline for Public Issue

- | | | |
|---|---|-------|
| ➤ Incorporation of SEBI comments in RHP | - | T+129 |
| ➤ File RHP with SEBI | - | T+130 |
| ➤ Receive SEBI go-ahead to RHP | - | T+145 |
| ➤ File RHP with ROC | - | T+146 |
| ➤ Marketing & Roadshows | - | T+161 |
| ➤ Issue opens | - | T+163 |
| ➤ Issue closes | - | T+168 |
| ➤ Allotment | - | T+177 |
| ➤ Transfer funds from Public Issue A/c to Company's A/c | - | T+180 |
| ➤ Listing and Trading | | |

Critical aspects

- Capital Built-up since the incorporation
- Litigation –MIS
- Email to OFS – At lower band as Denominator
- Publication Guidelines
- Directors Profile
- Legal Opinion of Subsidiary, Branch, and OFS
- Maximum Disclosure
- Best Coordination
- Taking care of Health of the Team
- Remain positive

Skills required by CS for IPO

- Expert in subject matter , understanding of accounts/ Ratios/ ESG, etc
- Positive attitude with effective Communication skills
- Attention to detail and good drafting
- Considerate and compassionate
- Patience (prevailing market condition)
- Team Player and Leader
- Active and adaptable
- Openness to feedback
- Active listener

Amita Desai & Co.

Company Secretaries

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