

# **Role of Company Secretary in Public Issue**

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## Disclaimer

- This Presentation is for knowledge sharing only and not be considered as legal opinion
- The views expressed herein are of my own and not of the ICSI or MCA.
- Request to seek professional guidance for specific query before acting upon any view expressed in this material or during the presentation

# Fund requirement and Raising



# What is Public Issue and its need

## What

Raising of Capital by selling shares /securities of the Company

## How

Securities could be of Shares, Debts or Hybrid ( Convertible)

## Why

- Investment Opportunities, for Organic Growth, Expansion, Diversification
- Funding Global Requirements, JV or Collaboration or setting up WoS overseas
- Funding Infrastructure Requirements, Marketing Initiatives and Distribution Channels
- Financing Working Capital Requirements, General Corporate Purposes
- Repaying debt to strengthen the Balance Sheet

# Types of Public Issue

## Primary IPO

Issuance of new shares to the public

E.G. Syrma SGS and Venus Pipes

## Offer for Sale (OFS)

Sale of shares by existing shareholders to the public

E.g. LIC

## Mixed IPO

Combination of issuance of new shares and Sale of shares by the existing shareholders

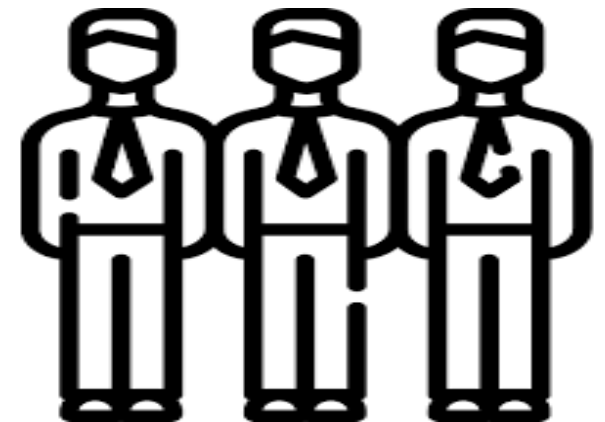
E.g. Ethos Ltd , Aether Industries Limited

## Various Acts and Regulations – Control, Process and Disclosures

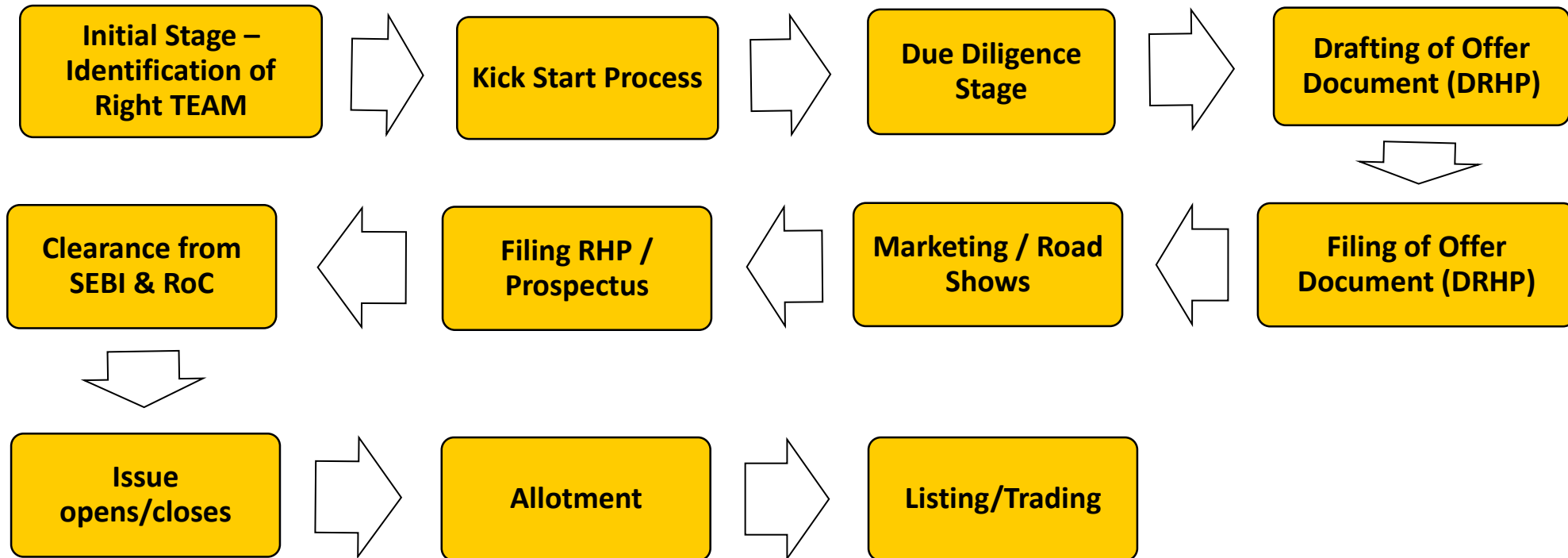
1. Companies Act
2. SCRA, 1956
3. SEBI Act, 1992 read with ICDR, LODR, SBEB & SE, PIT
4. Depositories Act 1996
5. FEMA, 1999
6. Sector Specific Acts, Regulations
7. Labour & Taxation Laws



**Right TEAM at the Right TIME**



# Stages of Public Issue



## Recent Trends in Capital Raised through Public Issues

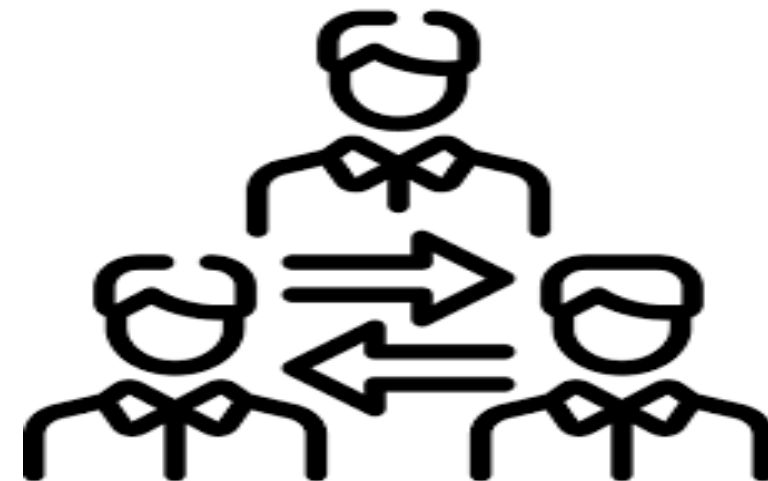
Sr. No.	Financial Year	IPOs (incl. SME IPOs)	FPOs (incl. SME IPOs)	OFS	Total ( All amount in Crores)
1	2021-22	Rs. 112,349	Rs. 4314	Rs. 11,513	Rs. 128,176
2	2020-21	Rs. 31,512	Rs. 15,029	Rs. 28,440	Rs. 74,981
3	2019-20	Rs. 20,786	Rs. 35	Rs. 17,326	Rs. 38,147
4	2018-19	Rs. 16,340	Rs. 0	Rs. 21,686	Rs.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

**Source: Prime Database**



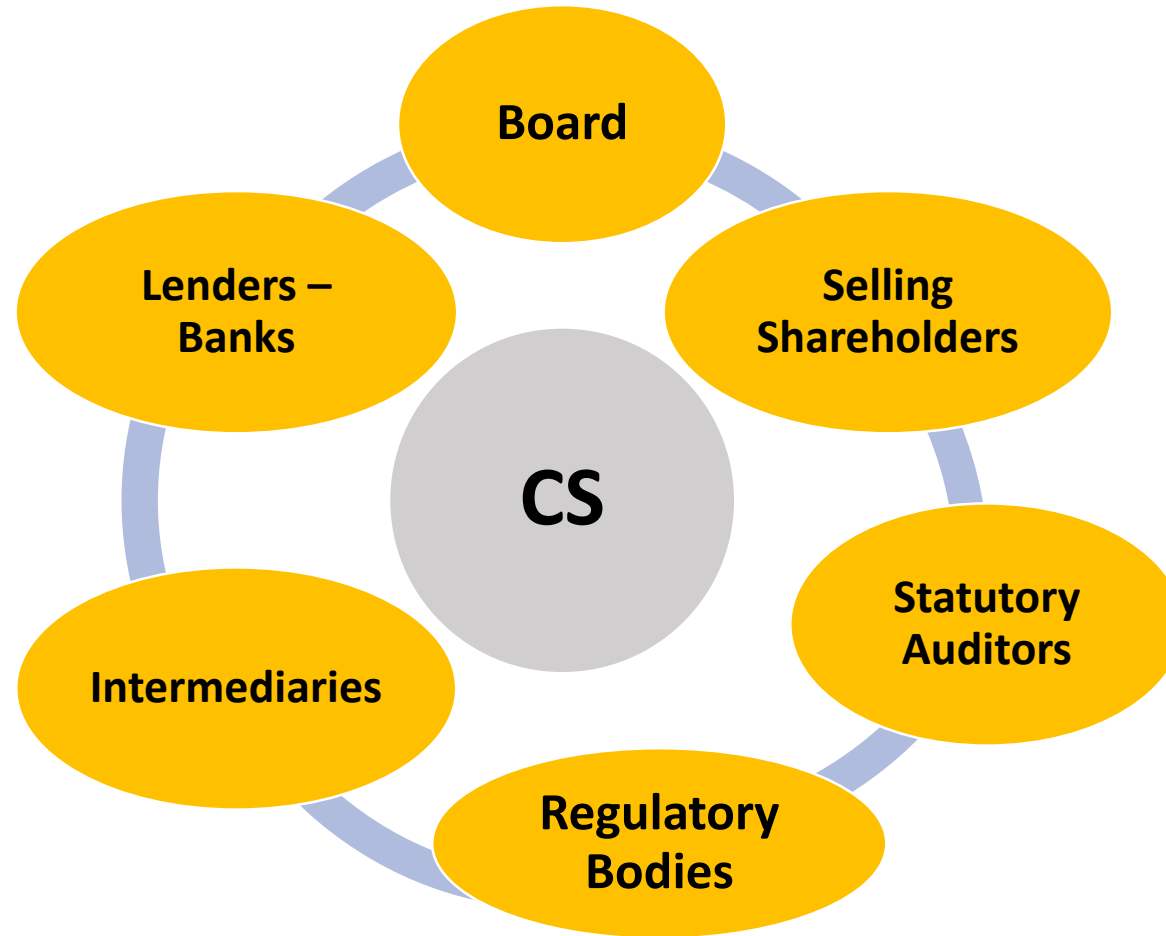
## Intermediaries in a Public Issue

- Merchant Banker/Book Running Lead Manager (BRLM)- Broker Syndicate
- Legal Counsels
- Credit Rating Agency/ Industry Report
- Statutory Auditors of the Issuer company
- Registrar to the Issue
- Escrow Bankers
- Advertisement/PR Agency/
- Printers
- Monitoring Agency





# Parties with whom CS need to deal with in a Public Issue



## Business Review by BRLM

- Brief introduction of Board of Directors, KMP & the Management Team
- Conducting SWOT Analysis
- Market Share in the sector in which the Issuer Company operates
- Defining Corporate Structure/preparing Organization Chart
- Key Milestones of the Issuer Company
- Awards / Recognitions of the Issuer Company
- Endeavors that have been undertaken by the Company for growth & expansion
- Objective of the IPO

# Due Diligence



## Due Diligence & Drafting of DRHP

- 1. Corporate Matters-** Col, Show Cause Notices, if any received from any govt authorities, forms filed with regulators, details of each office ( Regd and Corporate), details of all subsidiaries, Annual Reports of company and group companies, details of KMP, Loans and investment, any merger or amalgamation, SBO and many more details.
- 2. Capital Structure-** SHP pre-post ( 1 yr, 2 yr and 10 days before filing), details of each allotment, ESOP, Register of Members, pledge of shares, increase in auth capital, bonus issue, pvt placement, forfeited securities, outstanding securities, split and consolidation in past 2 year, demat of shares and many more details

## Due Diligence & Drafting of DRHP

- 3. Object of the Issue-** Projects, means of financing, firm arrangement, loans sanctioned, Land, Plant & Machinery details, and, identification of entity for investment
- 4. Risk Factors & MDA-** Losses of past, dependency of one supplier or customer or KMP, litigation, investor dispute or grievances, negative cash flow, restrictive covenants with investor or lender

## Due Diligence & Drafting of DRHP

5. **About the Company-** Product or services of the company, corporate profile, Award or Accreditation, name of all brands of the company, cost overrun for any project, list of all material laws and regulations, critical functional area, Details of clients across geographies, industry verticals, service offerings
6. **Our Management-** Board Member, KMPs, Core Management Team, Shares held by them, Organisation chart, contract and remuneration and loans given



## Due Diligence & Drafting of DRHP

- 7. Promoter & Promoter Group-** Are they originally promoter or acquired the company, Name and Shareholding of each promoter, promoter group companies, none are debarred or disqualified, not wilful defaulter or fugitive economic offender, not penalized by SE or SEBI, each related party transactions with them
- 8. Group Companies/ JV/ Associates or Subsidiaries-** Details of each such entity, any of them are listed , transactions with them, amount of profit or loss not accounted in the company's financials

## Due Diligence & Drafting of DRHP

9. **Government Regulations & Filing**- Details of all licenses, registration with its current status ( for company and its material subsidiaries), grant received if an with conditions, any termination or lapse of licenses or registration, inspection or audit by any regulatory authorities and its report
  
10. **Financial Indebtedness, Charges** – Loan take (local or ECB), securities created, RBI and RoC filings, MIS Report, lease finance, adverse remarks by the auditors, contingent liabilities , debt restructuring

## Due Diligence & Drafting of DRHP

11. **Movable & Immovable properties**- Details of all assets, MIS Report, Title Deeds, any remark by Auditors, details of agreements with plan and details of registration, valuation or revaluation, charge created, report of site survey, current assets and its details.
12. **Intellectual Property/ Proprietary Right (IPR)**- Details of all TM or other IPR registered in the name of the company, list of Trade Name and logo owned by the company, assignment of any IPR, disputes about IPR, control on protection of IPR

## Due Diligence & Drafting of DRHP

13. **Litigations-** MIS Report with details of all litigation filed by or against the company, any of its group/associate or subsidiary , any of its Directors and KMPs , current status of it, opinion of legal counsel , if any, Order or Decree in the matter, litigation with creditors beyond material threshold finalised by the Board for disclosure in DRHP
  
14. **Insurance of Assets /D & O Insurance coverage –** MIS report of all current insurance, detail of each claims, if any, any rejection of claim, any assignment of policy

## Due Diligence & Drafting of DRHP

15. **Human Resources/ People-** Organisation structure, number of employees, terms and conditions, contract labour, trade union, compliance of all labour related laws, any litigation, policies related to employee, average employee turnover in previous years
16. **Miscellaneous-** Any other which are significant and Covid related impact

# Preparatory Stage



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

1. Eligibility- Regulation 6 (1) or 6 (2) of SEBI (ICDR) ,2018
2. Eligibility for Offer for Sale- Regulation 8 & 8A of SEBI (ICDR), 2018
3. MoA & AoA (Removal of Restrictive Clauses or Special Rights, if any)
4. Conversion into Public Company (in case the issuer is a Private Company)
5. Dematerialization of shares, Capital History, Revaluation Reserves , Bonus
6. Review of Accounting policies and related matters
7. Review of Auditor Qualifications

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

8. Review of all important litigations by or against the issuer company
9. Insurance / Approvals & Licenses- Up to date
10. Compounding of any violations
11. Formulation of Business Plan/ Project and utilization of funds
12. Delegation of work amongst team members and various intermediaries
13. Review of Profile of all Directors and KMPs and ensure no one is disqualified



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

14. Identification of Promoters and Promoter Group – CA, 2013, ICDR & LODR
15. Identification of Group Companies and Material Subsidiaries
16. Identifying the status of various Intellectual Property Rights (IPR)
17. Identifying Significant Beneficial Owner (SBO)
18. Establishment of Internal Controls (Financial or otherwise)
19. Exemption application ( No identifiable promoter, relatives of promoters)

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

20. Drafting of various Codes and Policies and scanning the entire website
21. Ensuring compliance with Corporate Governance – ID, Committee, ToR
22. ESOP in compliance with SEBI Regulations
23. RPT details / CSR compliances
24. Working of Promoters Contribution, Acquisition cost/ Lock-In of shares
25. Role of each Intermediaries to be predefined 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)

# Documentation



## 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 the Eligibility of public issue

# Standard Certificate/ Undertaking/ Consents

## Company Undertaking & Confirmation

- In relation to Advertisement
- In relation to Stock Exchanges

## Company DD Certificate

- About Capital
- About Promoter
- About Group/ subsidiaries
- About various Approval and Licenses
- About all 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 and Rating



## Industry Report/ Grading Process

- Seek information required from Credit Rating Agencies
- Discuss with Management
- Visit to Company's locations
- Meeting Executive Director & Independent Director
- Analytical Assessment Report
- Discussion with the core management team

# Approvals



## Board / Shareholders approval

- Approval of the Board & Shareholders for the following:
  - 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 EL with the intermediaries

## Board / Shareholders approval

➤ Approval of the Board & Shareholders for the following:

- 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 Set 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

## 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

## Auditors/ ICA Deliverables

Restated Financial Statements for preceding 3 FY & stub period as per Ind-AS

1. Consent letter for naming the Auditor in the Offer Document
2. He should have Peer Review Certificate
3. Certificate for Eligibility to undertake the offer under SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2018
4. 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 Frauds

## Auditors/ ICA Deliverables

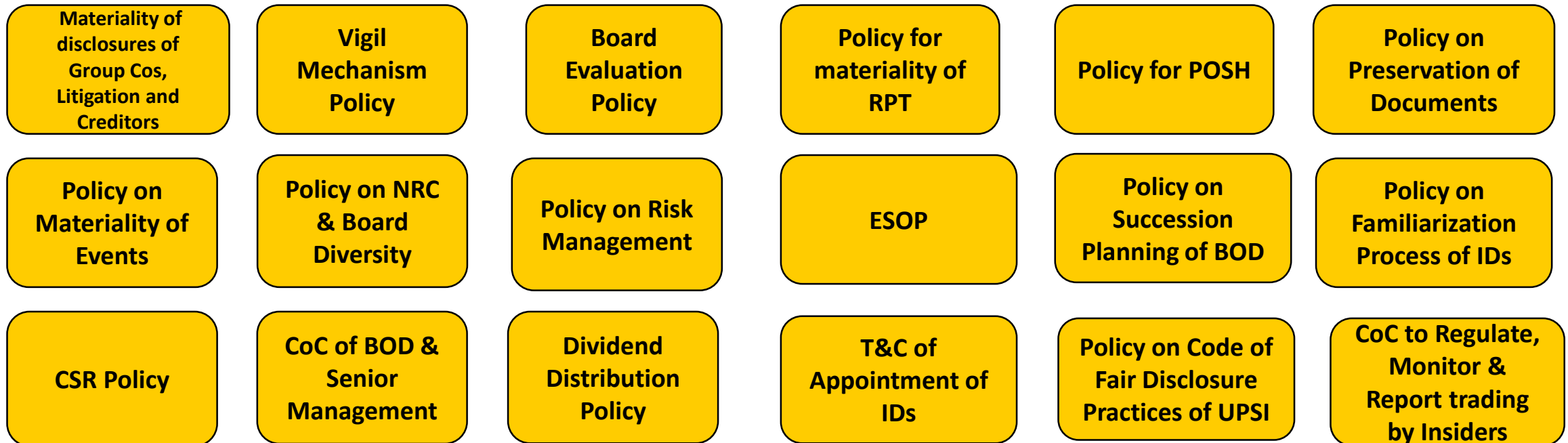
25. Promoters contribution
26. Dividend
27. Share Capital built up
28. Tax litigation , if any
29. Remuneration paid to Directors and KMPs
30. Certificate on SEBI Order 2015
31. Certificate on SEBI Order 2020
32. Certificate on Rejection Criteria under the SEBI General Order(s) relating to financial 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, Key Managerial Personnel, Subsidiaries, and Associates and update MIS tracker
3. Preparing Promoter Matrix for identification of Promoters and Promoter Group
4. Organization Structure and composition of Board & its Committees

# Role of Company Secretary in Public Issue Deliverables

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



## Role of Company Secretary in Public Issue Deliverables

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

## Role of Company Secretary in Public Issue Deliverables

11. Review of each Risk Factors ( internal and external) and discuss with Board and Management, review DRHP and Circle Ups, review Legal Opinion of Counsel of subsidiaries/ JV
12. Continual disclosure to all Statutory and Regulatory Authorities
13. Application for In Principle Listing with Stock Exchanges along with fees
14. 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)
15. Preparing details for CFD ( Corporate Finance Department) and processing fees



## Role of Company Secretary in Public Issue Deliverables

16. 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

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

## 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 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                                   |   |       |



## Skills require by CS for working for Public Issue

- Expert of subject matter, understanding of accounts/ Ratios/ ESG etc
- Positive attitude with good Communication Skill
- Attention to detail and good in drafting
- Considerate and Compassionate & Team player
- Patience (prevailing market condition)
- Leadership quality, pro-active approach with transparency
- Active & Adaptability
- Openness to feedback
- Active Listener





## **Amita Desai & Co.**

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