

Bangladesh Securities and Exchange Commission (Public Issue) Rules, 2015

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The new public issue rules 2015 replaced the public issue rules 2006

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Requirements for filing application for a public offer (R-3)

Any of the following methods can be used for public offering

Fixed price method, when offered at par value; or

Book-building method, when offered above par value.

General requirements for Public Offering

It offers an amount of at least equivalent to 10% of its paid-up capital (including intended offer) or Tk. 15 crore at par value, whichever is higher and the minimum existing paid up capital must be Tk. 15 crore.

It has prepared its financial statements in accordance with the IFRS/IAS

It has got cost audit by professional accountants as per the Companies Act, 1994, if applicable and audited financial statements by panel auditors.

General requirements for Public Offering (Contd.)

It has no accumulated retained loss at the time of application;

It has complied with the provisions of guidelines regarding valuation of assets, if any, as published by the Commission from time to time; and

The issuer or any of its directors is not a bank defaulter.

The issuer/issue has been rated by a credit rating company registered with the Commission.

Additional requirements for fixed price method

- ❑ If it has been in commercial operation at least for immediate last 3 (three) years, it has positive net profit after tax and net operating cash flow at least for immediate preceding 2 (two) financial years; if it has been in commercial operation for a period less than 3 (three) years, it has positive net profit after tax and net operating cash flow at least for the latest financial year; if it has not started its commercial operation or not completed any financial period yet, it has positive projected net profit after tax and net operating cash flow; and
- ❑ At least 35% of the issue has been underwritten on a firm commitment basis by the underwriter(s).

Additional requirements for book-building method

- ❑ It has been in commercial operation at least for immediate last 3 (three) years;
- ❑ It has made net profit after tax at least for immediate preceding 2 (two) financial years;
- ❑ It has positive net operating cash flow at least for immediate preceding 2 (two) financial years;
- ❑ The issuer/issue has been rated by a credit rating company registered with the Commission;
- ❑ At least 35% of the issue has been underwritten on a firm commitment basis by the underwriter(s).

Additional requirements for Repeat Public Offer

An issuer of a listed securities may make repeat public offer, subject to compliance with the following

- ❑ Information concerning the repeat public offer shall be disseminated as price sensitive information immediately upon board decision as well as upon approval at the general meeting and approval of the Commission
- ❑ The proceeds of previous public offer or rights issue, as the case may be, have been utilized fully and relevant reports were duly submitted to the Commission;
- ❑ The issue has been fully underwritten on a firm commitment basis by the underwriter
- ❑ The proceeds of previous public offer or rights issue, as the case may be, have been utilized fully and relevant reports were duly submitted to the Commission;

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Distribution mechanism of securities having conversion features

- ❑ At least 40% of the issue shall be reserved for the existing shareholders
- ❑ At least 40% of the issue shall be reserved for Public Offer; and
- ❑ Maximum 20% of the issue may be made through private placement

Provided that the securities so issued shall not be converted either partly or fully before a minimum period of 2(two) years of issuance.

Submission of application and processing thereof (R-4)

General Requirements

- i. An issuer shall submit the application, to the Commission for consent along with ten copies of the red-herring prospectus/information memorandum, prepared as per requirements of these Rules
- ii. Immediate after submission of the application, the issuer shall post the red-herring prospectus/prospectus/information memorandum in the websites of the issuer and the issue manager(s)
- iii. All the required documents as per Annexure - A, B, C, D and G shall be submitted with the application
- iv. The Commission shall verify the application, documents and primary recommendation of the exchanges

Submission of application and processing thereof (R-4) (Contd.)

General Requirements

- v. The Commission or the exchanges may require the issuer or its directors, officers, issue manager(s), auditors, value (s), to submit additional disclosure, information, documents, certification and clarification
- vi. the exchange(s) shall submit its final recommendation along with a declaration as prescribed in the listing regulations to the Commission
- vii. the Commission, after examination of the information, documents, recommendations of the exchanges and considering all the factors, shall take decision to approve or reject the application for public offer

Submission of application and processing thereof (R-4) (Contd.)

Additional requirements for book building method

❑ Conducting road show and submission of application

1. The issuer/issue manager shall send invitation to the eligible investors, both in writing and through publication in at least 5 (five) widely circulated national dailies, giving at least 10 (ten) working days' time, to the road show indicating time and venue of such event.
2. The invitation letter shall accompany a red-herring prospectus containing all relevant information covering the proposed size of the issue and at least 3 (three) years audited financial statements and valuation report, prepared by the issue manager without mentioning any indicative price, as per internationally accepted valuation methods

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Submission of application and processing thereof (R-4) (Contd.)

Additional requirements for book building method

3. Representatives from the exchanges shall present in the road show as observers and eligible investors shall submit their comments and observations
 4. After completion of the road show, the red-herring prospectus shall be finalized on the basis of comments and observations of the EIs participated in the road show
- ☐ Consent for bidding to determine the cut-off price: After examination of the prospectus and relevant documents, the Commission, if satisfied, shall issue consent to commence bidding by the eligible investors for determination of the cut-off price

Determination of cut off price

- ❑ Eligible investors shall participate in the electronic bidding process and submit their intended quantity and price
- ❑ No eligible investor shall quote for more than 10% (ten percent) of the total amount offered to the eligible Investors and bidding shall be opened for 72 (seventy two) hours round the clock
- ❑ The bidders shall deposit at least 20% (twenty percent) of the bid amount in advance
- ❑ The bidders can revise their bids for once, within the bidding period, up to 20% variation of their first bid price

Determination of cut off price (Contd.)

- ❑ After completion of the bidding period, the cut-off price will be determined at nearest integer of the lowest bid price
- ❑ All the eligible investors participating in the bidding shall be offered to subscribe the securities at the cut-off price. It is mandatory for EIs bidding at or above the cutoff price to subscribe up to their intended quantity
- ❑ The securities shall be offered to general public for subscription at an issue price to be fixed at 10% discount (at nearest integer) from the cut-off price;

Subscription by the eligible investors

- ❑ After examination of the draft prospectus and relevant documents, the Commission, if satisfied, shall issue consent for raising of capital from the general public and approve the prospectus
- ❑ The balance amount of subscription shall be paid by the eligible investors prior to the date of opening of subscription to the general public

Provided that in case of failure to deposit the remaining amount by the eligible investors, advance bid money deposited by them shall be forfeited by the Commission and the unsubscribed securities shall be taken up by the underwriters

Distribution mechanism of securities (R-6)

Methods	Eligible Investors		General Public	
	MF	Others	NRB	Others
Fixed Price	10%	40%	10%	40%
Book Building	10%	50%	10%	30%

Provided that in case of under-subscription in any category by up to 35% in an initial public offer, the unsubscribed portion of securities shall be taken up by the underwriter(s):

Further provided that in case of under-subscription in any of categories above 35%, an initial public offer shall be considered as cancelled

Publication of prospectus and opening of subscription list

- ❑ Upon receiving the consent of the Commission to the issue of capital under these rules, the abridged version of prospectus prepared as per Annexure F, as approved by the Commission, shall be published by the issuer in four national daily newspapers (in two Bangla and two English), within the time specified in the letter of consent issued by the Commission. The full prospectus shall, however, be posted on websites of the Commission, exchanges, issuer and the issue manager(s).
- ❑ The subscription for general public shall commence after 25 (Twenty Five) days of the publication of the abridged version of the prospectus
- ❑ Upon completion of the period of subscription for securities, the issuer shall inform the Commission the following matters - total number of securities for which subscription has been received and amount received from the subscription

Prospectus delivery requirements (R-8)

- ❑ Sufficient copies of prospectus shall be made available by the issuer so that any person requesting a copy may receive one
- ❑ The issuer shall post the prospectus vetted by the Commission in the issuer's website and also put on the websites of the Commission, exchanges, and the issue manager

Limitation on the use of the prospectus (R-9)

- ❑ A prospectus may be used to offer the securities until any of the following events occur, namely
 - a. There are material changes in any of the information included in the prospectus; and
 - b. Any transaction or event which is material to affect or change the conditions under which the public offer is being made as per the contents of the prospectus and which should have otherwise been required to be reported to the Commission

- ❑ If any of the above events occur, the offer shall stand suspended until an amendment duly signed by all the directors of the issuer, the chief executive officers of both the issuer and the issue manager to the prospectus furnishing the appropriate information has been filed with and declared effective by the Commission

Lock-in (R-10)

Ordinary shares of the issuer shall be subject to lock-in, from the date of issuance of prospectus or commercial operation, whichever comes later, in the following manner:

- ❑ All shares held, at the time of according consent to the public offer, by sponsors, directors and shareholders holding 5% or more shares, other than alternative investment funds, for 03(three) years.
- ❑ All shares allotted, before 02(two) years of according consent to the public offer, to any person, other than alternative investment funds, for 03(three) years.
- ❑ In case any existing sponsor or director of the issuer transfers any share to any person, other than existing shareholders, within preceding 12 (twelve) months of submitting an application for raising of capital or initial public offer (IPO), all shares held by those transferee shareholders, for 03(three) years.

Lock-in (R-10) (Contd.)

- ❑ 25% of the shares allotted to eligible investors, for 03 (three) months and other 25% of the shares allotted to them, for 06 (six) months
- ❑ All shares held by alternative investment funds, for 01 (one) year; and
- ❑ Shares allotted, within two years of according consent to the public offer, to any person other than the shares mentioned in sub-rules (1), (2), (3), (4), and (5) above, for 01 (one) year.

Provided that ordinary shares converted from any other type of securities shall also be subject to lock-in as mentioned above.

Issue manager (R-1 1)

- ❑ The issuer shall appoint one or more issue manager, registered with the Bangladesh Securities and Exchange Commission and
- ❑ The issue manager(s) shall be entitled to fees and be responsible for the issue including preparation and disclosures made in the prospectus, road show and use of the public issue proceeds by the issuer

Fees for public offer and listing of securities (R-14)

Types of Fees	Fixed Price Method	Book Building Methods
Issue Management fees	1% on the public offering or Tk 03.00 mil whichever is lower	2% on public offer amount (including premium) or Tk 5 mil whichever is lower
Underwriting fees	Maximum 1% on 35% of the public offer amount	Maximum 1% on 35% of the public offer amount (including premium)
Application fee for the Commission	Tk 50000 (non-refundable)	Tk 50000 (non-refundable)
Consent fees for the Commission	.40% on the public offer amount	.40% on the public offer amount
Fees for funds	As per relevant rules	
Fees for Exchanges	As per relevant listing regulation	
Other fees	As per relevant contracts	

Approval, rejection and review (R-15)

- ❑ On receipt of an application of consent for public offer from an issuer, the Commission shall review the said application to ascertain whether it is complete and acceptable
- ❑ In case the said application is incomplete, the Commission shall inform the issuer in writing, to remove the incompleteness/deficiencies, within 40 (forty) working days, after examination of the said application
- ❑ If the issuer fails to remove the incompleteness within the stipulated time, it shall have to file a fresh application

Approval, rejection and review (R-15) (Contd.)

- ❑ The Commission shall issue letter of consent, subject to such conditions as it may deem fit to specify, within 60 (sixty) working days of receipt of a complete application, if such application is acceptable to the Commission;
- ❑ If the application is not acceptable to the Commission, it shall issue a rejection letter, stating the reasons for such rejection, within 60 (sixty) working days of receipt of the last correspondence

Approval, rejection and review (R-15) (Contd.)

- ❑ The issuer, whose application has been rejected by the Commission, may apply for review to the Commission within 60 (sixty) working days from the date of such rejection, and the decision of the Commission thereon shall be final;
- ❑ The Commission reserves the right to accept or reject any public issue proposal in its own discretion in the greater interest of the investors and the capital market as well

Commission decision shall be final on certain matter (R-17)

Notwithstanding anything contained in these Rules, in the event of any confusion or difference of opinion on any matter whatsoever, the decision of the Commission shall be final and binding on all concerned

Annexure

- ❑ Declaration about responsibilities of directors, CEO
- ❑ Due diligence certificates by issue manager
- ❑ Due diligence certificates by underwriter
- ❑ Ratio analysis
- ❑ Disclosure requirements in the red herring prospectus/prospectus
 1. Preliminary Information and declarations
 2. Availability of Prospectus
 3. Table of Contents
 4. Executive Summary

Annexure (Contd.)

5. About the issuer
6. Corporate directory of the Issuer
7. Description of the Issuer
8. Summary
9. General Information
10. Capital Structure
11. Description of Business
12. Description of Property
13. Plan of Operation and Discussion of Financial Condition

Annexure (Contd.)

14. Management's discussion and analysis of financial condition and results of operations
15. Directors and Officers
16. Certain Relationships and Related Transactions
17. Executive Compensation
18. Options granted to Directors, Officers and Employees
19. Transaction with the Directors and Subscribers to the Memorandum
20. Ownership of the Company's Securities
21. Corporate Governance

Annexure (Contd.)

22. Valuation Report of securities prepared by the Issue Manager (See)
23. Debt Securities
24. Parties involved and their responsibilities, as applicable
25. Material contracts
26. Outstanding Litigations, Fine or Penalty
27. Risk Factors and Management's Perceptions about the Risks
28. Description of the Issue
29. Use of Proceeds
30. Lock-in

Annexure (Contd.)

- 31. Markets for the Securities Being Offered
- 32. Description of securities outstanding or being offered
- 33. Financial Statements
- 34. Credit Rating Report, if applicable
- 35. Public Issue Application Procedure
- Disclosure in abridge version of prospectus
- Documents to be filed by the issuer

Thanks
for your attention