

FAQs on Securities and Exchange Board of India (Listing of Specified Securities on Institutional Trading Platform) Regulations, 2013

Q.1. What is an Institutional Trading Platform and is it different from the SME Platform?

Ans. The Securities and Exchange Board of India (“SEBI”) has notified the SEBI (Listing of Specified Securities on Institutional Trading Platform) Regulations, 2013 (“ITP Regulations”) that introduces the new Institutional Trading Platform (“ITP”) specifically for listing of specified securities of small and medium enterprises (“SME”) and start-ups. The ITP Regulations forms part of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 as Chapter XC. The EMERGE-ITP (“EMERGE ITP”) is a different platform from the existing SME platform (EMERGE) of the National Stock Exchange (“NSE”)

The key difference is that listing on EMERGE ITP can be done without an Initial Public Offering (“IPO”).

Q.2. What categories of investors can invest in the securities listed on the EMERGE ITP?

Ans. All the investors eligible to participate in the capital markets (Main Board and EMERGE) can also participate on EMERGE ITP. However, the platform is meant for sophisticated and informed investors as indicated by the minimum trading lot size of Rs.10,00,000. Thus, institutions or individuals willing to trade in a minimum lot size of Rs.10,00,000 can participate on EMERGE ITP.

Q.3. Is market making mandatory in case of listing on the EMERGE ITP?

Ans. No. Unlike in the case of listing on the SME exchange, market making is not mandatory for listing on the EMERGE ITP.

Q.4. Will a company need to undertake an IPO for listing its specified securities on the EMERGE ITP?

Ans. No. Listing on EMERGE ITP does not require the company to undertake an IPO.

Q.5. What are the eligibility norms for a company to be listed on the EMERGE ITP?

Ans. A company shall be eligible for listing of its specified securities on the EMERGE ITP, if it satisfies the conditions specified in regulation 106Y of the SEBI (Issue of Capital and Disclosure) Regulations, 2009. Please also refer to the eligibility criteria to list on the EMERGE ITP platform [here](#).

Q.6. Can a private limited company list its securities on the ITP?

Ans. No, a private limited company will need to convert into a public limited company before listing its specified securities on the ITP. Conversion will need to happen in accordance with the

provisions of the Companies Act, including by way of passing of a special resolution and filing of the prescribed form with the applicable Registrar of Companies.

Q.7. Can a freshly incorporated company list its securities on the ITP?

Ans. As per the eligibility criteria for listing on the ITP, a company must have at least one full year's audited financial statements for the immediately preceding financial year at the time of making the listing application. Thus, besides fulfilling the other eligibility criteria, a start-up company must have completed at least one year of operations (spanning the financial year from April 1st to March 31st) and the financial statements of such time period must have been audited and prepared in order to get its securities listed on the ITP.

Q.8. What are 'specified securities' for the purposes of the ITP Regulations?

A. A company can list only its specified securities on the ITP. 'Specified securities' for the purposes of ITP mean equity shares and convertible securities.

Q.9. Are there any categories of entities which are exempted from the aforesaid eligibility norms of listing?

Ans. There are no categories of entities which are exempted from the aforesaid eligibility norms of listing.

Q.10. What is the minimum lot size and is there any lock-in applicable?

Ans. The minimum trading lot on the ITP shall be Rs. 10,00,000 and a minimum of 20% of the post listing capital held by the promoters shall be locked-in for a period of three years from the date of listing of the specified securities on the ITP.

Q.11. Can the company whose specified securities are listed on the EMERGE ITP, list its securities on any other stock exchange?

Ans. No. A company whose securities are listed on the EMERGE ITP cannot undertake an IPO or list its securities on any other stock exchange. If a company wishes to undertake an IPO, it will have to exit the EMERGE ITP and then proceed with the application for listing with an IPO on either EMERGE or the Main Board.

Q.12. Can a company whose specified securities are listed on the EMERGE ITP raise capital through private placement?

Ans. Yes, the company whose specified securities are listed on EMERGE ITP can raise capital through private placement. Such private placement shall be subject to the following:

- a) company shall obtain in-principle approval from the NSE prior to such private placement;
- b) approval of shareholders through a special resolution under section 81(1A) of the Companies Act, 1956 shall be obtained;
- c) allotment of securities shall complete within two months of obtaining such approval;
- d) notice to shareholders shall include disclosures regarding purpose for private placement, identity of allottees, whether allottee is a promoter or belongs to the promoter group and if not the relationship between promoter and allottee, nature of securities being issued and the price at which the security is being issued;
- e) aforesaid disclosures shall be made available to the NSE for dissemination at least 15 days prior to the general body meeting where approval of shareholders is sought for the proposed private placement; ;
- f) securities issued through private placement shall be at a price not less than higher of: (i) the book value of the equity shares as per its last audited financial statement not older than six months, or (ii) value of shares as determined in an independent auditor's or registered merchant banker's report.

Q.13. Can the company whose specified securities are listed on EMERGE ITP make a rights issue?

Ans. Yes, the company whose securities are listed on EMERGE ITP can make a rights issue. Such company making the rights issue shall comply with the following:

- a) there shall not be an option for renunciation of rights;
- b) the company shall obtain in-principle approval from the NSE prior to a rights issue;
- c) the company shall send a letter of offer to its shareholders and the same shall be made available on the website of the company and the NSE.

Q.14. What disclosures are required to be made by a company that is proposing to list its securities on the EMERGE ITP?

Ans. A company proposing to list on the ITP needs to prepare an 'information document' containing disclosures as specified in Schedule XIX A. Such an information document shall be made public by hosting the same on the website of the NSE for a period of at least 21 days from the date of filing. The information document shall contain the following disclosures:

- a) Details about the business
- b) Risk factors
- c) Security ownership of beneficial owners and management along with details of any significant shareholders' agreement
- d) Details of all the directors and executive officers
- e) Details pertaining to the promoters
- f) Details with respect to related party transactions and director independence
- g) Details of any material pending legal proceedings

Q.15. Is it compulsory for a company proposing to list on EMERGE ITP to have an underwriter or a market maker?

Ans. A company proposing to list on EMERGE ITP is neither required to have its proposed issue underwritten by an underwriter nor is it required to have a dedicated market maker to provide liquidity to the investors.

Q.16. Are there any tax benefits for the investors who have invested in a company which gets listed on the ITP?

Ans. The tax benefit available to the investors at the time of their exit from securities listed on the ITP should be as is applicable in case of securities listed on traditional market platforms, there should be no long term capital gains tax payable on transactions executed on the floor of the stock exchange on which Securities Transaction Tax (STT) has been paid. Short term capital gains on transactions executed on the floor of the stock exchange should be taxed at the prevailing rate for other listed securities, provided that STT is paid on such transaction.

Q.17. What are the benefits for angel investors, alternative investments funds, etc. who may have invested in the securities of companies eligible to be listed on the ITP?

Ans. The ITP is a favorable platform for eligible companies in which such risk investors have invested. Following are some of the benefits available for such investors:

- a) Listing provides an exit route to risk investors as well as liquidity to the ESOP-holding employees. Listing not only offers the investors flexibility for entry and exit, but also the confidence required for any such transaction.
- b) Listing leads to better and timely disclosures and thus also protects the interest of the investors.
- c) Listing also provides an ease of monitoring of the company by the investors as the company is required to follow the compliance requirements of a regulated platform.
- d) There are tax benefits available to the investors (as have been discussed in the preceding question).
- e) Listing provides a continuing liquidity to the shareholders of the entity. This in turn helps broaden the shareholder base.

Q.18. In what situations can the company exit from the ITP?

Ans. A company whose specified securities are listed on the ITP may exit from that platform, if:

- a) its shareholders approve such exit by passing a special resolution through postal ballot where 90% of total votes and the majority of non-promoter votes have been cast in favor of such proposal;
- b) NSE approves such exit.

A company whose securities are listed on the ITP shall exit the platform in the event of:

- a) its specified securities have been listed on the ITP for a period of 10 years
- b) the company has paid-up capital of more than Rs. 25,00,00,000
- c) the company has revenue of more than Rs. 300,00,00,000 as per the last audited financial statement
- d) the company has market capitalization of more than Rs. 500,00,00,000

The NSE may grant 18 months' time to such company to delist upon happening of any of the aforesaid events.

Q.19. In what circumstances will the company be delisted and permanently removed from the ITP?

Ans. A company listed on the ITP shall be delisted and permanently removed from the platform under the following circumstances:

- a) the company has failed to file its periodic filings with the NSE for more than a year; or
- b) the company has failed to comply with corporate governance norm(s) for more than a year; or
- c) notwithstanding anything contained in clauses (a) and (b) above, the NSE may delist the company on non-compliance of the condition of listing as may be specified by NSE.

Q. 20. Can a company which has been delisted and permanently removed from the ITP re-apply for listing? If yes, how much time should elapse before it can do so?

Ans. In case of a company delisted and permanently removed from the platform, no company promoted by promoters and directors of such delisted company shall be permitted to be listed on the ITP for a period of 5 years from the date of such delisting. These provisions shall not apply to a company promoted by the independent directors of such a delisted company.

Q.21. What about the compliance with the norms under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("Takeover Code") for a company whose securities are listed on the ITP?

Ans. The Takeover Code has been amended to the effect that it shall not apply to direct and indirect acquisition of shares or voting rights in, or control over, a company listed on the ITP.

Q.22. Do the provisions of the SEBI (Delisting of Equity Shares) Regulations, 2009 ("Delisting Regulations") apply to securities listed on the ITP?

Ans. The Delisting Regulations has been amended to the effect that the Delisting Regulations shall not apply to securities listed on the ITP.

Q. 23. What would be the status of any shareholders' agreement entered into among the shareholders of a company which subsequently gets listed on the ITP?

Ans. A shareholders agreement is an arrangement amongst the shareholders who are party to such agreement to govern their rights and obligations vis-à-vis the company. Upon a listing on the ITP, the shareholders agreement among the shareholders of such company should be valid as long as it is compliant with the regulatory framework, and should not automatically become null, void or inoperative upon a company achieving such a listing.

Q. 24. As the shares will be dematerialized, is appointment of a Registrar & Transfer Agent compulsory?

Ans. Yes. However, an in-house share department having connectivity with depositories may be permitted.

Q. 25. What are the Corporate Governance norms which the companies listed on the EMERGE ITP platform have to follow? Is there a requirement to have committees of the board of directors such as for e.g. an audit committee or a remuneration committee?

Ans. A company listed on the EMERGE ITP platform has to comply with the requirements specified in Clause 42 of the listing agreement. A model format of the listing agreement is available [here](#). It will further have to comply with the requirements as specified in the Companies Act in relation to corporate governance norms specified therein including requirement of committees of the board of directors.

Date: March 25, 2014

DISCLAIMER: These FAQs have been prepared by Nishith Desai Associates, a research based international law firm with offices in Mumbai, Silicon Valley, Bangalore, New Delhi and Munich, upon the request of and with inputs from the National Stock Exchange of India Limited. It may not be relied upon by any person for any purpose, nor is it to be quoted or referred to in any public document or shown to, or filed with any government authority, agency or other official body without the consent of the National Stock Exchange. The FAQs contained herein are generic in nature and should not be construed as a legal opinion. These FAQs have been prepared by relying upon (i) relevant provisions of the Indian laws, (ii) the regulations thereunder, and (iii) the judicial and administrative interpretations thereof, as of the date of the FAQs, all of which are subject to change or modification by subsequent legislative, regulatory, administrative, or judicial decisions. There can be no assurance that there will be no change of the same. Any such changes could have an effect on the validity or veracity of the FAQs. Nothing may be inferred or implied beyond the matters expressly stated herein. FAQs have been prepared not in consultation with or taken the view of any governmental or statutory body or any court of law, and cannot be relied for any different view of law that may be taken by such bodies. The FAQs are limited only with respect to the Indian law. No responsibility is assumed by, or can be fixed on to Nishith Desai Associates, with respect to statements in these FAQs. Statements made in respect of laws of jurisdictions other than India should be revalidated from the respective foreign counsels.
