

Small and Medium Enterprises:Key Listing Imperatives

Introduction

The Small & Medium Enterprises (SME) constitutes the bulk of the Indian economy and serves as a key engine in the growth of the Indian economy. Over time, the SME's have expanded their scope of operation from traditional to more modern sectors *inter alia*, IT, entertainment, retail etc. A special role was earmarked for the SMEs and the Micro, Small, and Medium Enterprises Development (MSMED) Act, 2006 was enacted to facilitate the promotion and development of this sector. A big leap was witnessed when the SEBI through its circular dated May 18, 2010, laid down framework for setting up a stock exchange/ trading platform dedicated to SMEs.

SME Stock Exchange

An SME Exchange is a stock exchange dedicated for trading the securities of SMEs who otherwise find it difficult to get listed on the Main Board. The concept originated taking into consideration the difficulties faced by SMEs in gaining visibility and attracting sufficient trading volumes when listed along with other stocks on the Main Board of stock exchanges.

SME has been defined in Chapter XB of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations as a trading platform of a recognized stock exchange having nationwide terminals permitted by SEBI to list the securities issued in accordance with Chapter XB of SEBI (ICDR) Regulations and includes a stock exchange granted recognition for this purpose but does not include the Main Board.¹ The Main Board has been defined as a recognized stock exchange having nationwide trading terminals, other than SME exchange.²

Both the Bombay Stock Exchange (BSE) & the National Stock Exchange (NSE) have seized the opportunity & introduced their SME trading platform. The BSE began their operations in March 2012, followed by NSE trading platform i.e. NSE Emerge in September 2012.

KEY LISTING REQUIREMENTS

POST ISSUE FACE VALUE CAPITAL

0- 10 Crores – SME Exchange

10- 25 Crores – SME/ Main Board

Above 25 Crores – Main Board

¹ Regulation 106N(1)(c), Chapter XB, The SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2009

² Regulation 106N(1)(a), Chapter XB, The SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2009

S.No	Eligibility Criteria's	BSE SME Requirement	NSE Emerge Requirement
1.	Incorporation	<ul style="list-style-type: none"> Company incorporated under the Companies Act, 1956/2013. 	<ul style="list-style-type: none"> Company incorporated under the Companies Act, 1956/2013.
2.	Post Issue Capital (FV)	<ul style="list-style-type: none"> Minimum: ₹1 Cr³ Maximum: ₹25 Cr 	<ul style="list-style-type: none"> Minimum: ₹1 Cr⁴ Maximum: ₹25 Cr
3.	Track Record	<ul style="list-style-type: none"> Net Tangible Assets: ₹1 Cr Net Worth: ₹3 Cr (₹15 Cr for broking companies)/ 1 Cr or 3 Cr, if no track record <p>Track Record of Distributable profits for 2 years out of preceding 3 completed FYs.</p> <p>The company should have a (combined) track record of at least 3 years.</p> <p>The company should have combined positive cash accruals (EBDT) from operations for at least 2 financial years preceding the application and its net worth should be positive.</p>	<ul style="list-style-type: none"> Track record of at least three years of either: <ul style="list-style-type: none"> (i) The applicant seeking listing; (ii) The promoters⁵/promoting company, incorporated in or outside India; or (iii) Proprietary/Partnership firm and subsequently converted into a Company (not in existence as a Company for three years) and approaches the Exchange for listing. The company should have positive cash accruals (EBDT) from operations for at least 2 financial years preceding the application and its net-worth should be positive
4.	Other Requirement	<ul style="list-style-type: none"> Mandatory facilitation of trading in Demat securities Certificate that no winding petition or reference to BIFR Mandatory corporate website Promoters to attend to interview with Listing Advisory Committee No change in promoter in preceding 1 year 	<ul style="list-style-type: none"> The Company has not been referred to Board for Industrial and Financial Reconstruction (BIFR). No petition for winding up is admitted by a Court of competent jurisdiction against the Applicant Company. No material regulatory or disciplinary action by a stock exchange or regulatory authority in the past three years against the applicant.

³ Source: Pantomath Group

⁴ Source: Pantomath Group

⁵Promoters mean one or more persons with minimum 3 years of experience in the same line of business and shall be holding at least 20% of the post issue equity share capital individually or severally

S.No	Eligibility Criteria's	BSE SME Requirement	NSE Emerge Requirement
			<ul style="list-style-type: none"> • Mandatory facilitation of trading in Demat securities.
5.	Disclosure Requirements	<p>A certificate from the applicant company/ promoting companies stating the following</p> <p>a) The Company has not been referred to the Board for Industrial and Financial Reconstruction (BIFR).</p> <p>Note: Cases where company is out of BIFR is allowed.</p> <p>b) There is no winding up petition against the company, which has been admitted by the court or a liquidator has not been appointed.</p>	<ul style="list-style-type: none"> • The following matters should be disclosed in the offer document, in relation to the applicant, promoter, promoter company: • Any material regulatory or disciplinary action by a stock exchange or regulatory authority in the past one year • Defaults in respect of payment of interest and/or principal to the debenture/bond/ fixed deposit holders, banks, FIs during the past three years. An auditor's certificate shall also be provided by the issuer to the exchange, in this regard. • Litigation record, the nature of litigation, and status of litigation. • The status of criminal cases filed or nature of the investigation being undertaken with regard to alleged commission of any offence by any of its directors and its effect on the business of the company, where all or any of the directors of issuer have or has been charge-sheeted with serious crimes like murder, rape, forgery, economic offences etc.

Listing Procedure under the BSE SME

The Listing procedure under the BSE SME can be summed up by 5 P's which are explained below:

- **Planning**
This stage entails the appointment of a merchant banker, whose foremost role is to undertake due diligence and preparation of draft offer document.

- **Preparation**

Herein the merchant banker prepares the documentation for filing after conducting due diligence i.e. checking the documentation including all the financial documents, material contracts, Government approval etc. and planning the IPO structure, share issuance & financial requirements.

- **Process**

Filing of Prospectus: The Merchant Banker prepares the draft prospectus and files the same with Exchange as per the requirements.

Verification & Site Visit: BSE verifies the documents and processes the same and subsequently, a visit to the company's site is undertaken by the Exchange official. The Promoters are also called for an interview with the Listing Advisory Committee.

Approval: BSE issues an in Principle approval on the recommendation of the Committee, provided all the requirements are compiled by the Issuer Company.

Filing of RHP/Prospectus: Merchant Banker files these documents with the ROC indicating the opening and closing date of the issue. On receipt of the approval from the ROC, the opening date is communicated to the Exchange along with the requisite documents.

- **Public Offering**

The Initial Public Offer opens and closes as per schedule. After the closure of IPO, the Company submits the documents as per the checklist to the Exchange for finalization of the basis of allotment.

- **Post Listing**

BSE finalizes the basis of allotment and issues the Notice regarding Listing and Trading.

Benefits of Listing for the Company

- Easy Access to Capital
- Enhanced Visibility and Prestige
- Encourages Growth of SMEs
- Ensures Tax Benefits: No tax on LTCG. STCG tax applicable at 15%- reduced rate. No tax on equity infusion and no tax on distress business purchase.
- Enables Liquidity for Shareholders.

Initial Listing Fees: The cost of initial listing on BSE SME platform is Rs. 50,000.

Other Guidelines: Trading lot size

The minimum application and trading lot size shall not be less than Rs. 1,00,000/-

The minimum depth shall be Rs 1,00,000/- and at any point of time it shall not be less than Rs 1,00,000/-

The investors holding with less than Rs 1,00,000/- shall be allowed to offer their holding to the Market Maker in one lot.

However in functionality the market lot will be subject to revival after a stipulated time.

NSE SME Platform

Listing Process:

- **In Principle Approval of the Draft prospectus**

The issuer shall prepare a draft prospectus in accordance with the Companies Act, The Securities Contract (Regulation) Act and the SEBI (ICDR) Regulations and shall file the same along with the relevant documents, mentioned hereunder, to the NSE:

- Certificate from the Merchant Banker & Issuer stating compliance with the eligibility requirements mentioned above.
- Certificate from the Merchant Banker specifying that the requisite disclosures have been made.
- Certificate from the Applicant stating that neither any petition for winding up has been admitted nor the company has been referred to BIFR. No material regulatory action has been taken against the applicant company in the last 3 years.
- Soft Copy of the Annual reports for the last 5 financial years.
- Certified true copy of the Resolution passed by the Board and the shareholders authorizing the issue.
- Copy of Articles & Memorandum of Association of the Company.
- Undertaking given by the Merchant Bankers in a prescribed format.
- Details of shareholding for last three financial years and as on date of Draft Red Herring Prospectus/ Draft Prospectus in the prescribed format.
- Full Names and PAN of the Company, promoters, promoter group, directors and key managerial persons of the company.
- Details of the rejection of any previous application of the Company for listing of securities, along with reasons etc.

- **Submission of Application**

Issuers desiring to list on the NSE pursuant to the IPO shall make an application for admission of their securities to dealings on the NSE in the forms prescribed in this regard by the NSE, along with the certain documents to be filed within T+2, T+3 & T+4 days, as prescribed.

- Confirmation from the Merchant Banker & the Company that the NSE eligibility criterion has been met and the issue is in compliance with the SEBI (ICDR) Regulations.

Listing Fee & Structure: To list its securities on NSE Emerge the issuer is required to pay an initial processing & listing fee of Rs. 25,000 each.

Benefits of NSE Listing

- Access to growth Capital
- Wider shareholder base
- Higher profile and visibility
- Higher Corporate Governance
- Seamless path to the main Board

Migration from the SME Platform to the Main Board⁶

The companies seeking migration to Main Board of BSE should satisfy the eligibility criteria. It is mandatory for the company to be listed and traded on the BSE SME Platform for a minimum period of two years and then they can migrate to the Main Board as per the guidelines specified by SEBI vide their circular dated 18th May 2010 and as per the procedures laid down in the ICDR guidelines Chapter XB.

Optional Migration to the Main Board: An issuer whose post issue face value of the capital is more than Rs. 10 crore and upto Rs. 25 crores may migrate its specified securities to Main Board only if such migration is approved by a special resolution passed through postal ballot. The special resolution can only be acted upon if the votes in favour of the proposal are twice the number of votes cast against it. Further, the eligibility criteria laid down for listing laid down by the Main Board has to be met.

Compulsory Migration to the Main Board: The issuer is required to migrate to the Main Board where the post issue face value of the capital is likely to increase beyond Rs. 25 Crore rupees by way of further issue, subject to the fulfillment of the eligibility criteria laid down by the Main Board. The further issue shall only be made on approval of the further issue by a special resolution through postal ballot wherein the votes cast in favour are twice the number of votes cast against it.

Other Guidelines under the SEBI (ICDR) Regulations applicable to SMEs

Underwriting: The issue made under these Regulations shall be 100% underwritten and the merchant bankers shall underwrite atleast 15% of the issue size on its own account. The underwriter is required to file an undertaking to the Board, one day prior to the opening of the issue, stating that the issue is 100% underwritten along with the list of underwriters indicating the extent of underwriting commitment made by them.

Minimum Application Value: The minimum application size in terms of number of the specified securities shall not be less than 1 Lakh rupees per application.

Minimum Number of Allottees: No allotment can be made where the number of allottees is less than 50.

Market Making: The merchant banker is required to ensure compulsory market making through the stock brokers of the SME Exchange from the date of the listing or migration of the securities on the SME Exchange, as the case may be. The issuer shall disclose the details of arrangement of market making in the offer document.

⁶ Regulation 106U, Chapter XB, The SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2009

INSTITUTIONAL TRADING PLATFORM

Introduction:

In order to facilitate capital raising by small and medium enterprises including startup companies which are in their early stages of growth and to provide for easier exit options for informed investors like angel investors, VCFs and PEs etc., from such companies, it has been decided to permit listing without an Initial Public Offer and trading of specified securities of small and medium enterprises(SMEs) including start-up companies on Institutional Trading Platform (ITP) in SME Exchanges.

"Institutional Trading Platform" means the trading platform for listing and trading of specified securities of entities that comply with the eligibility criteria specified in regulation 106Y of Chapter XC of ICDR Regulations.

Salient features incorporated in the ICDR regulations under Chapter XC

Entities eligible for registration on the IT platform as:⁷

- An entity engaged in the use of technology to provide products, services or business platforms with substantial value addition and at least 25% of its pre-issue capital is held by QIBs as on the date of filing of draft information document or draft offer document with the Board; or
- Entity in which at least 50% of the pre-issue capital is held by the QIBs as on the date of filing of draft information document or draft offer document with the Board.

SALIENT FEATURES OF THOSE AMENDMENTS ARE AS UNDER:

- (i) The ITP shall be accessible only to informed investors who are either individuals or institutions and the minimum trading lot shall be ten lakh rupees on this platform;
- (ii) Companies listed on ITP shall not make a public issue of its securities.

ELIGIBILITY FOR LISTING:

- (i) **Tenure of Existence:** Minimum 1 year and Max 10 years since incorporation
- (ii) **Revenues:** Up to Rs. 100 Crores
- (iii) **Paid Up Capital:** Up to Rs. 25 Crores
- (iv) **Pre Investment/ Debt :** Min Rs. 50 Lakhs by any VCF, Angel investor, MB, QIB, or PFI Or Debt Facilities from a scheduled bank for at least 3 years
- (v) **Other Conditions:**
 - Company, its promoter, group company or director is not a willful defaulter
 - No winding up petition against the company
 - No reference to BIFR during last 5 years by company, group companies or subsidiaries
 - No Regulatory action during last 5 years by SEBI, RBI, IRDA or MCA against company, its promoter or director.

⁷ Regulation 106Y(1), the SEBI (Issue of Capital & Disclosure Requirements)

- the company has atleast one full year's audited financial statements, for the immediately preceding financial year at the time of making listing application;

In addition to the above requirements, certain minimum investment is to be received by the Company from atleast any one of the following categories of investors:

- Atleast one alternative investment fund, venture capital fund or other category of investors/lenders approved by SEBI, has invested a minimum amount of fifty lakh rupees in the equity shares of the company.
- One or more angel investor who is a member of an association / group of angel investors which fulfils the criteria laid down by the recognised stock exchange, has invested a minimum amount of fifty lakh rupees in the equity shares of the company through the association/group.
- Finance from a scheduled bank for its project financing or working capital requirements and a period of three years has elapsed from the date of such financing and the funds so received have been fully utilized.
- A registered merchant banker or a qualified institutional buyer has invested atleast Rs. 50,00,000 in equity shares of the company which shall be locked in for a period of three years from the date of listing.
- A specialized international multilateral agency or domestic agency⁸ or a public financial institution under section 2(72) of the Companies Act, 2013 has invested in the equity capital of the company. domestic agency means a domestic developmental institution like Small Industries Development Bank of India (SIDBI) or National Bank for Agriculture or Rural Development (NABARD).

PROCESS OF LISTING.

- (i) A company which meets the requirements of the SEBI (Listing of Specified Securities on Institutional Trading Platform) Regulations, 2013 (ITP Regulations) may apply to the recognised stock exchange for listing along with the information document containing disclosures as specified under Schedule XIX A of ICDR Regulations. This Information document shall be made available to public through the website of the recognised stock exchange.
- (ii) The concerned recognized stock exchange may issue an in-principle approval to companies eligible for listing on ITP.
- (iii) A company which has received in-principle approval from a recognised stock exchange for listing of its specified securities on ITP shall be deemed to have been waived for the limited purpose of listing on ITP.
- (iv) Such listing shall not be accompanied by any issue of securities or capital raising from public in any manner.

⁸ Domestic agency means a domestic developmental institution like Small Industries Development Bank of India (SIDBI) or National Bank for Agriculture or Rural Development (NABARD).

