

**FIXED-PRICE ISSUE UNDER THE COMPANIES ACT, 2013 & SEBI (ISSUE  
OF  
CAPITAL AND DISCLOSURE REQUIREMENT) REGULATIONS, 2018**

*by*

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**ABSTRACT**

*If shares are sold at a fixed price during an initial public offering (IPO), this type of issuance is referred to as a fixed price issue. The second most popular method of an IPO is this one. The issuer must explain and adequately justify the price established in the offer document. Typically, businesses only choose fixed price issues if the management believes that a fair price can be agreed upon internally without first being tested in the market, as in the instance of book building. The objective of this paper is to analyse the fixed price issue w.r.t the Companies Act, 2013 and SEBI ICDR regulations, 2018.*

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## INTRODUCTION

In case of application for the fixed price issue Regulation 106(M)(1) of Chapter XB of SEBI, 2009, is followed. Applicants are required to submit to the designated intermediaries their applications. The Company may reject applications in the event of acceptance by QIB applicants, in consultation with the Head Manager, if the reasons are given, in writing, to the applicants. In the case of individual non-institutional applicants and retail applicants, our company would be entitled only for technical reasons to reject applications.

Section 29(1) of the Companies Act, 2013<sup>1</sup>, mandates that the allotment of equity shares to all successful applicants must be dematerialized. Depository account data, such as the DP ID, Client, and PAN, are among the fields that are left blank on application forms and are thus ripe for rejection. DP IDs, customer IDs, and PANs submitted by brokers (including subbrokers) on the electronic stock exchange system that do not match the DP IDs, customer IDs, and PANs in the depot database are grounds for application rejection.

An applicant's equity shares will not be able to be physically transferred. Candidates will not be allowed to allot Equity Shares in person. The allotment's equity shares were only traded on the stock markets' dematerialized section. Candidates must verify that the PAN supplied in their application form matches the PAN of the person(s) in whose name a recipient account is established. A single applicant is the source of this PAN.

If two people are applying for a joint account, only the first holder of the account in common names should be stated on the application form. There would only be one first applicant who would need to sign the application form, and that first applicant would then be assumed to have signed the application on behalf of the other joint applicants.

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<sup>1</sup> Securities And Exchange Board Of India (Issue Of Capital And Disclosure Requirements) Regulations, 2018, Rule 15 (B) (2).

## ERSTWHILE FRAMEWORK

No-Hassle Prices The value of the shares is entirely up to the issuer. Costs that are set in stone In an offering document, both qualitative and quantitative assertions are used to describe the pricing structure. In addition to the stock markets, the business registrar has been notified of this offer.

Prior to May 1992, the Capital Issues Controller (CCI) set the price of a problem solely on the basis of previous data. Established in 1947 under the CCI Act, the CCI was an independent agency that focused on main securities. There were a variety of considerations taken into account while determining the problem's fair worth.

For over four decades it had been in existence and regulated the prices of the shares issued by companies. The CCI price was based on a fixed pattern and didn't take market emotions or any other factor into account.

As the price fixing was low, the CCI regime helped investors, and the investor was unlimited.<sup>2</sup>

CCI price fixation had the main disadvantages:

- (a) Highly prudent
- (b) Discontinue public access for companies
- (c) Increased capital costs for businesses
- (d) Lower corporate capital appreciation
- (e) New shareholders' benefits at current shareholders' expense

The CCI office was abolished, a landmark in the history of the capital issues and ended an era of pricing controls for issues subject to the requirements of the guidelines for public disclosure for over four decades. Before the abolition of the CCI, under President Mr. M.J. Pherwani the Government established a highly competent study group.

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<sup>2</sup> Shagun Mehta & Rachil Jain, Psychiatry of Book-Building & Fixed Price Issuance Process, [2008] 83 SCL 36 (MAG).

In 1992, after taking the recommendations of the Pherwani Committee into account and the CCI regime felt it was redundant, the Indian Securities and Exchange Board (SEBI) entered into force.

The main objective of the SEBI's development was to establish an efficient market regulator and the SEBI thus developed new price guidelines for securities issuance on the market.<sup>3</sup>

In 1995, the SEBI appointed an expert group to assess (then) the present disclosure standards in an offer document, and 'both of them constitute the foundation for the price of the issue' in order to execute book-building in the nation.

In November 1995, the Committee suggested and SEBI adopted the book-building approach for issuer corporations, subject to certain constraints.

### **WHAT IS A FIXED PRICE ISSUE ?**

If the shares are being offered at a fixed price in an initial public offering (IPO), the issue is known as the issue of the fixed price. This is the second favourite way of offering initially. The issuer must give the reasons and the appropriate rationale for the fixed price in the offer document.<sup>4</sup> Companies generally only deal with a fixed price issue if management believes that a fair price between them can be decided without having been tested on the market, like in book buildings.<sup>5</sup>

In conformity with the provisions of the SEBI ICDR Regulations of 2009, an issuer may decide either the issue price via book construction or undertake a fixed price issue. An Emitter may include in the Prospectus the Floor Price or Price Band (if the Book is built up) and in the Prospectus (if it is fixed)<sup>6</sup>, and shall determine the price before registering the Prospectus with the registrar of enterprises at a later date. The price band cap should be below or equivalent to 120 percent of the price of the floor.<sup>7</sup>

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<sup>3</sup> Koh, F., and Walter, T.. "A Direct Test of Rock's Model of the Pricing of Unseasoned Issues." *Journal of Financial Economics*, 23 (1989), 252–272. CrossRefGoogle Scholar.

<sup>4</sup> Securities And Exchange Board Of India (Issue Of Capital And Disclosure Requirements) Regulations, 2018, Reg. 127(5).

<sup>5</sup> Shagun Mehta & Rachil Jain, Psychiatry of Book-Building & Fixed Price Issuance Process, [2008] 83 SCL 36 (MAG).

<sup>6</sup> Securities And Exchange Board Of India (Issue Of Capital And Disclosure Requirements) Regulations, 2018, Reg. 29 (1).

<sup>7</sup> Securities And Exchange Board Of India (Issue Of Capital And Disclosure Requirements) Regulations, 2018, Reg. 127(2).

The issue may be priced freely by an issuer company. In the offer document, the basis for the issue price is disclosed, when the issuer details the qualitative and quantitative factors which justify the price for the issue.<sup>8</sup> The issuer can mention in a Draft Offer Document filed with SEBI a price band of 20% (price band capacity should not exceed 20% of the floor price) and the actual price can be determined at a later date before the SEBI/ROCs submits a final Offer Document.

In the event of a problem with the set price, you should deposit your application form and a check/demand draught for the needed amount with the approved bankers, whose names and addresses are stated on the application form. Over-subscriptions to a fixed price topic will be distributed proportionately.

For fixed pricing issues the public issue subscription list must remain open for not more than 10 business days and at least three working days.<sup>9</sup>

In the case of a fixed price issue, companies shall finalize the basis of the allocation within 30 days of closing the issue. Or, at a rate of 15 per cent per year, they are liable to pay interest.<sup>10</sup>

The reimbursement orders and assignment advice will be sent within two working days after the allocation basis. Within seven working days of the allocation basis being verified, the post-issue lead manager ensures that all steps for listing and commencing trading on all stock exchanges where the securities should be listed are completed. A solution to the book issue should be found in three weeks, and a solution to the issue of fixed price should be found in 37 days.

Two buckets are available for fixed price IPOs: Rs 1, 00,000 investors or more, and up to Rs. 1,00,000 investors.<sup>11</sup>

The applications received are then divided into two groups based on their final value: those under Rs. 1,00,000 and those beyond that sum. Subscription ratios against reserved shares for

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<sup>8</sup> Securities And Exchange Board Of India (Issue Of Capital And Disclosure Requirements) Regulations, 2018, Reg. 127(5).

<sup>9</sup> Securities And Exchange Board Of India (Issue Of Capital And Disclosure Requirements) Regulations, 2018, Reg. 140 (3).

<sup>10</sup> Securities And Exchange Board Of India (Issue Of Capital And Disclosure Requirements) Regulations, 2018, Rule 25 (a).

<sup>11</sup> Shagun Mehta & Rachil Jain, Psychiatry of Book-Building & Fixed Price Issuance Process, [2008] 83 SCL 36 (MAG).

each category in the offer document will be determined for each category. There are a number of subcategories for each sector based on the quantity of shares that are desired. Oversubscription ratio is then applied to the number of shares applied for to calculate how many shares each applicant would get. The number of successful allottees is then calculated.

In a fixed-price issuance, the allocation of securities to the various investor groups is outlined below:

1. Initially, at least 50% of the net offering of securities to the public should be allocated to retail individual investors.
2. Any securities that are not allocated to investors will be made available for allotment:
  - a) Other individuals, including those who are not retail investors.
  - b) However, many securities are applied for, other investors such as corporations/institutions.

### **COMPANIES ACT, 2013, ICDR REGULATIONS ON FIXED PRICE**

Section 26(1) of the Act states that the dates of the issue's opening and closure, as well as a statement concerning the issuance of allocation letters and refunds within the allowed period, shall be prominently displayed. In addition, the rules stipulate that the board of directors or its authorised committee must state, within fifteen days of the item's closing or within any time limit specified by SEBI, that a letter of allocation has been issued or that the application funds have been immediately reimbursed to applicants, if there is any interest in the topic.<sup>12</sup>

Section 32 of the Securities Act permits companies to produce a "red herring prospectus" before to releasing a prospectus. It is recommended by the red herring prospectus firm that the prospectus be submitted to the Registrar at least three days prior to the opening of the subscription list and offering of the security.

There will be no difference between the Red Herring prospectus and a prospectus in the prospectus and the same requirements as for a prospectus.<sup>13</sup>

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<sup>12</sup> THE COMPANIES ACT, 2013, §26 (1) (ii).

<sup>13</sup> THE COMPANIES ACT, 2013, §32.

On September 11, 2018, the Securities and Exchange Commission of India (SEBI) released the "ICDR Rules," which superseded the 20092 SEBI Regulations (Issue of Capital and Disclosure Requirements) ("SEBI").

SEBI's Board of Directors authorised further changes to the ICDRR on December 12th, 2018. The SEBI Regulations of the Securities and Exchanges Board of India (Examinant of Capital and Disclosure Requirements) were then released with effect from December 31, 2018 (the "Amendment Regulations") (Amendment). This article explores the changes brought forth by the Amendment Regulations.

### **Net Offer Allocation under ICDR Regulation 253 of the SME IPO:**

Regulation 253 of the ICDRR relates to the "Initial Public Offering" ("IPO") by Small and Medium Enterprises under Part VIII of Chapter IX ("SME").

A fixed price problem or a book problem may be the SME IPO. In cases not covered by book-built issues and in line with the provisions of Rules 32 (4) and 129(4) of the ICDR Regulations, the amendment regulations provide for allotments in the category of network offer<sup>14</sup>.

### **Regulation - 44 , SEBI (ICDR)**

1. Regulation 25 permits the public issue of observations during a 12-month period, provided that the rules of the Law of the Companies, 2013, are followed;
2. A question may be raised after three working days, at least after<sup>15</sup> [filing], in the case of the issue of a book, of the red herring's prospectus<sup>16</sup> and, in the event of a fixed pricing, of a prospectus.

### **DIFFERENCE BETWEEN FIXED PRICE ISSUE AND BOOK BUILDING ISSUE**

The term "Fixed price issue" refers to a situation in which the issuer has already decided on the issue price and has included it in the Offer Document.

<sup>14</sup> Loughran, T.; Ritter, J.; and Rydqvist, K.. "Initial Public Offerings: International Insights." *Pacific-Basin Finance Journal*, 2 (1994), 165–199. CrossRefGoogle Scholar.

<sup>15</sup> Substituted for "registering" by Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Seventh Amendment) Regulations, 2019, w.e.f. 1-1-2020.

<sup>16</sup> THE COMPANIES ACT, 2013, §32.

The term "Book Built issue" refers to an issue that is priced based on the amount of interest it receives from potential investors at different price points.

Securities in Book Building are offered at or higher floor prices, while securities in a public issue are offered at a fixed price. The requirement can be known every day when the book is constructed. But the demand is known at the end of the matter in case of public concern.

Features	Fixed Price process	Book Building process
<b>Significance</b>	Investors must only buy shares at the issue price, which is mentioned in this way. <sup>17</sup>	This strategy uses a bidding process to establish the issue pricing. There is a price band given to investors and they are asked to tender inside that price range. By selling shares at a set price, a company's stock value is established. <sup>18</sup>
<b>Prospectus</b>	Information on the price of the stock and the total number of shares being sold is included in the company's prospectus. <sup>19</sup>	Red Herring Prospectus is published by the organisation. Only the pricing range and overall problem size are provided. <sup>20</sup>
<b>Pricing</b>	Investors know in advance the price at which they will be offered the securities. <sup>21</sup>	The investor has no idea in advance what price securities will be offered or allocated at.

<sup>17</sup> Securities And Exchange Board Of India (Issue Of Capital And Disclosure Requirements) Regulations, 2018, Reg. 29 (1).

<sup>18</sup> Securities And Exchange Board Of India (Issue Of Capital And Disclosure Requirements) Regulations, 2018, Reg. 29 (1).

<sup>19</sup> Securities And Exchange Board Of India (Issue Of Capital And Disclosure Requirements) Regulations, 2018, Reg. 5 (2)(b).

<sup>20</sup> THE COMPANIES ACT, 2013, §32.

<sup>21</sup> Securities And Exchange Board Of India (Issue Of Capital And Disclosure Requirements) Regulations, 2018, Reg. 127(1).

<b>Demand</b>	Only after the closing of the issuance will the demand for the securities issued be known.	As the book is constructed, it is possible to track daily changes in demand for the securities provided.
<b>When Used</b>	In each situation, it may be applied. Questions of the public, of rights, of ESOS, and so on.	In public affairs, the IPO and FPO are often used acronyms.
<b>Payment</b>	A refund will be issued if payment is paid at the time of subscription.	Payment only after allocation.
<b>Cut off price</b>	Price is fixed in this process.	It is only authorised to bid at a cut-off price that ensures the application is legitimate regardless of any issue prices found within that range.
<b>Offer Price</b>	Investors are informed in advance of the price at which the securities will be offered and allocated. <sup>22</sup>	The issuer gives a 20% bidding band, and the ultimate price is established after the bidding closes.
<b>Reservations</b>	51% of the offered shares are reserved for applications less than Rs. 2 and the balance for applications of higher amounts. <sup>23</sup>	51% of the shares offered are QIBS reserved, 35% for Non-Retail and 15% for Retail Investors. <sup>24</sup>

<sup>22</sup> Securities And Exchange Board Of India (Issue Of Capital And Disclosure Requirements) Regulations, 2018, Reg. 127(1).

<sup>23</sup> INITIAL PUBLIC OFFERINGS (IPOs) REGULATIONS & PROCESS, Pg. 28, <https://www.icsi.edu/media/portals/25/IPO.pdf>.

<sup>24</sup> INITIAL PUBLIC OFFERINGS (IPOs) REGULATIONS & PROCESS, Pg. 29, <https://www.icsi.edu/media/portals/25/IPO.pdf>.



Indian Journal of Contemporary  
Legal and Social Issues

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## **ISSUE PROCEDURE**

A minimum of 25% of our company's post-Issue paid-up equity capital is required to be issued in accordance with Rule 19(2)(b) of the 1957 Rules of Procedure for Securities (the "Securities Regulations"), as modified (the "SCRR"). Under Chapter IX of the SEBI (Problem of Capital and Disclosure Requirements) Regulations, 2018, the Fixed Price Issue technique is used to solve this issue. In accordance with Section 253(2) of Chapter IX Regulations, retail customers are entitled to receive 50% of the net issue, while non-retail customers, such as QIBs and non-institutional applicants, get the remainder. That part will be added to the equity share of the non-retail share that will be given to other investors, including QIB and NIIs as well as the otherwise, subject to a successful application.

Allotments in net offers are made according to the valid application for the Issue Price, subject to availability of the net bid shares, and any additional equity shares available are all equity shares except where the allotment to each individual retail applicant, subject to availability of equity shares and of the remaining equity shares available, does not meet the minimum lot. It is possible for Our Company, in collaboration with the Lead Manager and the Bourse, to achieve spills from any other category or combination of categories under subscription. But when more than 50% of the net issue is distributed to individual retail investors, they are allotted that greater incidence by the individual retail investors.<sup>25</sup>

Applicants must submit their applications to intermediaries collecting the applications i.e., SCSB or registered applicants Share and Transfer Agents (TTA) and depository agents of stock exchanges or registered registrants Registered SEBI participants (DPs). The Company may reject applications at the time of acceptance of the application in consultation with the Lead Managers of QIB Applicants provided that the reasons for this rejection are given in writing to the applicant. The Company would be entitled to reject the applications only for technical reasons in the case of non-institutional applicants or retail single applicants.

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<sup>25</sup> Benveniste, L.; Busaba, W.; and Wilhelm, W.. "Price Stabilization as a Bonding Mechanism in New Equity Issues." *Journal of Financial Economics*, 42 (1996), 223–255. CrossRefGoogle Scholar.

### **Advantages Of Fixed Price Issue**

Fixed price attracts clients by guaranteeing them. A set price for the whole project, for example, lets the buyer know how much he'll pay before signing. Fixed prices are steady, so consumers get acclimated to them and are less likely to be offended by price fluctuations. Price point helps sales projections and profit estimations.

### **Disadvantages To Fixed Pricing**

The risk with fixed rates is that adjustments are not possible if you enter the delivery of products or services and realize that your price bases are above expected. Regardless of time or costs changes, the customer pays the established price. This can result in a customer being subject to loading due to many additional working hours above the price quota estimates. Fixed pricing also does not allow time adjustments to sell additional stocks or seats available for entertainment or other types of events.<sup>26</sup>

### **WHY COMPANIES CHOOSE BOOK BUILDING?**

Book construction helps to assess the inherent value of the instrument offered and the credibility of the company in the eyes of the public. The whole workout takes place in a wholesale manner.

- a) Future investors' obligations to an issue should be realistically priced.
- b) Book building determines the greatest market price and demand for shares and securities from the best quality investors to alter pricing and allocation choices.
- c) Book building sets pricing for an issue based on possible investors' willingness to take on problems and instruments.
- d) The issuer would gain from book-building since the final price was established 11 to 12 days before the issue opening. Book building gives investors quicker access to funds.
- e) As the issue is pre-sold, its fate is determined.
- f) The company Issuer shall save commissions on advertising and brokerage.
- g) Emitters may select quality investors.<sup>27</sup>

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<sup>26</sup> Lawrence M. Benveniste and Walid Y. Busaba, Bookbuilding vs. Fixed Price: An Analysis of Competing Strategies for Marketing IPOs , : <https://www.jstor.org/stable/2331230>.

<sup>27</sup> Schultz, P., and Zaman, M.. "Aftermarket Support and Underpricing of Initial Public Offerings." *Journal of Financial Economics*, 35 (1994), 199–220.CrossRefGoogle Scholar.

- h) The pricing of the issues by investors has a voice. They are more certain that what they are demanding is allocated. At the end of the process, investors don't need to lock up huge capital with the Emitter.
- i) The issue's price will be determined by the market. Because there is a distant possibility that the market price of the shares would fall below the issue price, this is a risky investment. As a result, the listing investment will have less of an impact on the investor.
- j) Prices based on optimal demand are possible.
- k) Efficient raising of capital through improved problem procedures leading to cost reduction, paperwork and lead times.
- l) Flexible pricing and/or size of the problems may be increased/decreased.
- m) Allocations are made transparent.
- n) It is possible to improve the flows of information for issues, managers, trade union members and investors.
- o) The process of book building inspires confidence among investors leading to a larger universe of investors.
- p) The book-building process creates after-market liquid and booming.
- q) The investors shall be assured of the allocation as the union members receive a firm allocation.<sup>28</sup>
- r) Immediate allotment of the available securities and listing of the placement part.

### **LIMITATIONS OF BOOK BUILDING**

- (a) The issuer company should be fundamentally strong and investors should be well-known.
- (b) In mature market conditions that have not been common in practice, the book-building system works very efficiently.
- (c) Pricing may be rigged as promoters may attempt to rescue trade union members.

Some more challenges are that the process of book building effectively reduces the price discovery loop for individual investors. Institutions offer all the points of the curve in such volumes. The construction of books leads to a totally opaque allocation process. The other interesting problem in the book construction process is the post-offer transfer. This was indeed

<sup>28</sup> Ritter, J. "The Costs of Going Public." *Journal of Financial Economics*, 19 (1987), 269–281. CrossRefGoogle Scholar.

known abroad, as the secondary market conditions between the offer and the allocation have changed worse. There's a chaotic default when the bidder is short of the money needed to deliver. The issuer then receives less money than expected and the bidder desperately sells his allocation.<sup>29</sup>

Book construction sells a problem step by step with the help of several intermediaries to investors at an acceptable price. Based on the fundamental philosophy of book building, any script's price depends primarily on the investors' perception of that company. The book building process is subject to criticism that it does not lead to a discovery of prices. The same is often determined through the company's private equity agreements a couple of months before the opening of the issue. The prices of an IPO in general are higher than the price of the deal. The maximum price also decreases the whole purpose to 20% of the floor price. As in the boom period, problems are often oversubscribed. Therefore, the issuer maintains the price of the cap as the problem price. The issue price is therefore almost certain to be, as is practically apparent, the price limit in most cases.<sup>30</sup>

### CASES ON MISREPRESENTATION

According to Section 447 of the Companies Act, 2013, criminal culpability for misrepresentation is the same as for fraud. Under Section 447, a fraudster faces six to ten years in jail.

He may be fined three times the amount of fraud. Public interest fraud carries a minimum 3-year imprisonment. Because of the IPO's public interest, any prospectus deception will result in at least three years in prison, a lawyer stated.

The civil liability in respect of a mistake in a prospectus is provided in section 35 of the Companies Act. Section 36 states, amongst others, that the directors of the company are liable for compensation at the time the prospectus was issued and the developers shall be responsible for each person who was injured or lost.

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<sup>29</sup> Welch, I. "Sequential Sales, Learning, and Cascades." *Journal of Finance*, 47 (1992), 695– 733. CrossRefGoogle Scholar.

<sup>30</sup> Lawrence M. Benveniste and Walid Y. Busaba, Bookbuilding vs. Fixed Price: An Analysis of Competing Strategies for Marketing IPOs , : <https://www.jstor.org/stable/2331230>.

In *Hefez Rustom Dalal v. Registrar of Companies*<sup>31</sup> it has been held that where objection was elevated after ten years. In no proceedings could be concluded that applicants have acted in a fair way and no deliberate intention was expressed to defraud the public and no mistaken declaration had been made in the prospectus to cover the public for subscriber share, no proceedings were held that the petitioners were correct and there was no intense intent on the part of the public. Therefore, it was possible to set aside the prosecution proceedings against them.

*Progressive Aluminium Ltd. v. Registrar of Companies*<sup>32</sup> held that a failure to commence commercial production on the date indicated in the Prospectus was not a misstatement provided there was a justifiable explanation for the delay. If the leaflet lacked merely explanation regarding the promoter's experience, it wouldn't be improper.

In *Shiromani Sugar Mills Ltd. v. Debi Prasad*<sup>33</sup> it was observed that :-Any particular except material facts concealing the very truth about which the character of the mistake is said, the shareholders shall not be entitled to rescind the purchase contract from prospectus automatically.

It is not intended for the promoters of an enterprise to argue that everything stated in the prospectus is truthful; it is necessary to be able to meet the objection, 'not to state the truth as it goes, but to disguise most material facts, which ought to have been made public, whose very concealment gives the truth which is said to be falsehood.

*T.S. Rajagopal Iyer v. South Indian Rubber Works Ltd*<sup>34</sup>. The appropriate Share for the respondents is indicated in the 2001-1937 prospectus. This prospectus also includes the names of several directors and specifies Rs. 40,000 as the minimum amount upon which the Company would continue in awarding shares. A change in the Directorate occurred before the allocation. The minimum amount required to subscribe has been reduced from 40,000 rupees to 10,000 rupees. The suit was upheld, which resulted in the prospectus going through significant revisions.

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<sup>31</sup> *Hafez Rustom Dalal v. Registrar of Companies*, [2005] 59 SCL 265 (Guj).

<sup>32</sup> *Progressive Aluminium Ltd. v. Registrar of Companies*, [1997]89 Comp.Cas. 147/ 14 SCL 177 (AP).

<sup>33</sup> *Shiromani Sugar Mills Ltd. v. Debi Prasad*, [1950] 20 Comp. Cas. 296 (All.).

<sup>34</sup> *T.S. Rajagopal Iyer v. South Indian Rubber Works Ltd*, [1942] 12 Comp. Cas. 203 (Mad).