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FOREWORD

The Indian economy has gone through phases of remarkable transformation over 69 years of its independence. India is being increasingly looked at as an engine that will drive global growth in future. In the journey during the current decade as India traverses a high growth path, it will ladder up several challenges with support of its economic system.

Small and medium enterprises (SMEs) have been playing an important role in the socio-economic development of India through their vital contribution to GDP, industrial growth, employment and exports. However, this sector is beset with challenges including lack of availability of adequate and timely credit and limited access to equity capital. While banks and financial institutions assist SMEs to meet part of their working capital requirements and expansion needs, equity capital has always been brought in by the promoters either from their own sources or family and friends.

In order to provide a market based solution for equity resource mobilization by SMEs, the need for having a separate exchange/platform for SMEs was felt for a long time. Efforts to provide an alternative source of equity funding to SMEs fructified with the launch of the BSE SME platform by BSE on March 12, 2012 and the SME platform 'Emerge' by NSE in September 2012. In this issue, we attempt to put forth the role of SME IPO as a catalyst to the role and growth of SMEs in India.

In this issue we have also written about Factoring and the role it plays in the cash conversion cycle. In times when there is a shortfall of liquidity in the market with elongated recovery period, often factoring can play a significant role in providing the much needed liquidity in the system.

This issue also talks about the SEBI Listing Obligations and Disclosure Requirements, 2015, notified on September 2, 2015, which has come into force from December 1, 2015. The Regulation seeks to replace listing agreements and to consolidate scattered listing circulars, guidance issued by stock exchanges and SEBI and emphasizes greater statutory force and consequential penal provisions for non- compliance in order to protect shareholder`s interest.

When one Company acquires another, often there is a premium paid in excess of its recognized Net Assets and at times greater than the fair value of its Net Assets. This premium is not only on account of Goodwill the company enjoys and transfers to the acquirer but also inherent Intangible Assets in the company. In this issue we have written about the Allocation of Purchase Price in an acquisition and the consequent Valuation of Intangible Assets.

We hope you enjoy the January - February, 2016 edition of Fintelligence. Please write back to us on fintelligence@vivro.net with your valuable feedback and comments. Wishing you all a very happy and prosperous New Year!

Nilesh Vaishnav
Chairman

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SME IPO
A CATALYST FOR SME COMPANIES TO SCALE NEW HEIGHTS

Introduction

The Indian market, like every emerging market, is a blend of companies of different sizes – ranging from family run small and medium businesses to professionally managed conglomerates. Over the past few decades, there has been a tremendous growth in the small and medium enterprises in India. Several factors have contributed to this growth – a growing and vibrant business environment and business eco-system, government incentives, expanding geographical markets, funding from banks and financial institutions and most importantly the zeal of Indian entrepreneurs to reach new heights. SMEs have hence emerged as a vibrant and dynamic component of the economy with significant contribution to GDP, industrial production & exports.

The ability of the MSMEs to grow depends on their ability to raise funds to make investments in technology, expansion, innovation and research. This is the biggest challenge MSMEs face all over the world, whether they are in developed nations or in developing nations. While debt and debt facilities have been made available through the institutional and support framework of banks and financial institutions, there is always a need to greater infusion of equity capital, which at time proves difficult to generate for these small and medium businesses. At present, equity funds are available to these entrepreneurs through their internal accruals, own sources of funds, friends, family and maybe a handful of venture capitalists and private equity funds.

Reforms to Boost Capital Raising for MSMEs

The government and regulators have also recognized this fact and have introduced various policy measures to help SMEs grow through implementations of the MSME Act 2006, National Manufacturing Competitiveness Programme, PM's Task Force on MSMEs, Rajiv Gandhi Udyami Mitra Yojana, VAT waiver for MSMEs and creation of a platform for SMEs to raise equity capital and list their equity shares.

The need for an SME exchange

In the existing financial ecosystem avenues of fund raising for small and medium businesses are skewed towards debt and debt facilities. Often requirements of bringing in the required promoters contribution or offering collateral security proves to be burdensome for certain companies who have not been able to create such assets which leads to a laggard expansion of business and loss of business opportunity.

Debt and Equity have a complementary role. There was a need to create a financial ecosystem, where there are adequate opportunities to raise Equity capital, improving financial ratios, reduce debt and assist enterprises in achieving a more robust financial strength. The Indian Regulators and Government recognised that the availability of equity capital is absolutely necessary in the present globalized world, as Indian SMEs compete with large conglomerates having access to equity capital and need based funds for their expansion and development.

To provide a platform for raising equity capital, the Market regulator – SEBI after the two attempts – Over the Counter Exchange in India and Indonext - permitted the setting up of a dedicated Stock Exchange or a trading platform for SMEs.

Launch of SME platform

Prior to establishing guidelines for SME Listing and fund raising, to consider whether the company can be taken public with a larger participation from retail investors and HNIs, certain basic financial requirements were to be met as per Securities and Exchange Board of India (SEBI) guidelines, as under.

1. Three yearsí track record of: Minimum Net Worth of INR 1 crore, Net Tangible Assets of INR 3 crores, of which not more than 50% are held in monetary assets
2. Minimum average pre-tax operating profits of INR 15 crores during the 3 most profitable years out of the immediately preceding 5 years
3. In case the company has changed its name in last 1 year, 50% of revenues to be from the activity indicated by the companyís changed name
4. Aggregate of proposed issue and previous issues in same year does not exceed 5 times its pre-issue net-worth of the company as per the audited financial statements of the preceding year.

If the above conditions are not satisfied, a company can make an IPO only through Book Building Process and allocation of at least 75% of the net offer to public is to be made to Qualified Institutional Buyers (QIBs).

Accordingly, several companies found it difficult to meet the requirements and institutions showed little or no interest in participating in smaller issue sizes which would be suitable to small and medium companies.

SEBI first came up with a framework for setting up a SME platform in 2008, announced detailed guidelines in 2010 and thereafter, in February 2012, set the norms for a minimum lot-size. The BSE launched its SME platform “BSE SME” in March, 2012 and thereafter NSE launched its SME platform – “Emerge” in March 2012.

The “SME Exchange” promotes those companies who wish to raise equity capital and have their specified securities listed and traded on a recognised Stock Exchange in India, who either fail to meet the criteria for a Main Board Listing with a larger public participation or have smaller public issues which does not garner the interest of large institutions in participating in the public issue.

The listing norms are specifically established to suit small and medium companies. The eligibility criteria for companies to raise capital and list on these exchanges are an under:

Eligibility Criteria	NSE	BSE
Post-Issue Paid up Capital	Shall not be more than Rs. 25 Crores	Shall be at least Rs. 3 Crores
Net Tangible Assets	No Requirement	At least Rs. 3 Crores
Net Worth	No Requirement	At least Rs. 3 Crores
Profit Track Record	• Profit track record of at least 3 years • Positive Cash Accruals from operations for at least 2 financial years and it should have positive net worth	• Distributable profits for at least 2 out of immediately preceding 3 financial years; Or • Net worth of at least Rs. 5 crores
Other Listing Conditions	• Applicant should not be referred to BIFR • No petition for winding up which has been admitted in a Court • No regulatory or disciplinary action by a stock exchange or a regulatory authority in the past 3 years	• Applicant should not be referred to BIFR • No petition for winding up which has been admitted in a Court • No change in the promoters of the Company in the 1 year preceding the date of filing application

Salient Features and Regulatory Requirements

Appointmentofa MerchantBanker / Lead Manager (LM)	LM to carry out a duediligenceand fileDueDiligence Certificatealong with Final Offer Documentwiththe Stock Exchange	Draft Offer Documentisnot required to be filed with SEBI butonlytheStock Exchange on whichtheequity shares are to be listed	Final Offer Document is to befiledwithSEBI, SME Exchange andROCthrough LM	While SEBI is the marketregulator, inordertosimplify the process of listing,SEBIisnot required to issue any observation letterontheOffer Document	The Final Offer Document is to be displayed on websites of SEBI, Company,LMand SME Exchange
The minimum application and trading lot size shall not be less than Rs. 1,00,000/-	Issue shall be 100% underwrittenand MerchantBankers to underwrite 15% in their own account	MarketMakingfor allscripslistedand tradedontheSME Platform(s)	MinimumNumber ofallotteesinthe InitialPublicOffer shallbeatleast50	There is no continuing requirement of minimumnumber ofinvestors,post issue	Existingbrokersin theCashSegment willbeentitledto tradeinbothCash as well as SME Segments

Market Making

Under the SEBI ICDR regulations applicable to SME Issues, the merchant banker to the issue shall bear the responsibility of compulsory market making for a period of at least three years. Market Making is an activity where the Member Brokers registered as Market Makers with the Stock Exchanges will provide two way quotes (buy and sell) for 75% of the time during a trading day. The Market Makers will have to hold 5% of the specified security to be listed at the time of allotment in their inventory to enable them to do the Market Making. Market Maker has to receive or deliver the specified securities in the market making process for a period of three years from the date of listing of Equity Shares. There would not be more than five Market Makers for a script at any point of time and the Market Makers may compete with other Market Makers for better quotes to the investors.

Migration to Main Board - Possible

- SME listed company whose post issue face value capital is more than **INR 10 Crores and up to INR 25 Crores**, may migrate it's specified securities to Main Platform after completion of two years from the date of listing. This shall be based on an application made to the Stock Exchange and accepted by the Stock Exchange's relevant committee; and
- Where the post issue capital of a company listed on the SME Exchange(s) is likely to increase beyond **INR 25 Crores** by virtue of any further issue of capital it will have to migrate to the Main Board/Platform of the Stock Exchange.

Benefits of Listing on an SME Exchange

- Listing provides an opportunity to companies to raise equity capital to fund new projects / undertake expansions / diversifications and for acquisitions.
- Listing increases the ability of a company to raise further capital through various routes such as Rights Issues, Qualified Institutional Placements (QIPs), Preferential Issue, as well as ADRs / GDRs / FCCBs.
- Improvement in Corporate Governance which leads to timely disclosures and investor protection.
- Increased equity capital improves credit rating and the ability of companies to raise funds from banks and financial institutions at better rates of interest.
- Equity financing reduces the company's exposure to debt thereby reducing leverage, finance costs and achieving a healthier balance sheet.
- Provides an exit route to private equity investors and Venture Capitalists.
- Encourages Employee Stock Options Plans and its liquidity, which ensures stronger employee commitment, participation and recruitment incentive.
- Listing also helps generate an independent valuation of the company by the market.
- Listing raises a company's public profile with customers, suppliers, investors, financial institutions and the media.
- Listing provides liquidity to the shareholders of the company facilitating a market driven exit.
- Tax Benefits to facilitate exist and Mergers and Acquisitions
- The sale of listed securities in the short term attracts a capital gains tax of 15%. There is no long term capital gains tax on the sale of listed securities provided it has been subject to STT.

BSE SME Index

BSE launched the 1st ever SME IPO Index on 14th December, 2012. Indian Capital Markets witnessed, the launch of the first Index dedicated to Small and Medium enterprises in the country - BSE SME IPO Index. Base Date of Index is August 16, 2012 with Base Index Value of 100 with Free-float market capitalization.

BSE SME IPO Index

Developments Since Launch of SME Platform:

- Market Making Institutions activated (92 registered with BSE and 25 with NSE)
- Listing of 100th Company on BSE SME
- BSE launched first SME IPO Index
- Direct Listing on SME Platform from regional bourses permitted.
- Migration of Listed Companies from SME Exchange to Main Board

SME Exchanges Worldwide

At present more than 24 countries in the world operate separate Boards and Exchanges for SMEs. These Boards and Exchanges have been enabling SMEs as well as new entrepreneurs to access the capital markets for financing their growth. Some of the important SME Exchanges / Boards in the world are:

Country	UK	Japan	Singapore	China	India
SME Exchange	AIM	MOTHERS	CataList	SME Board	BSE SME and NSE Emerge
Date of Induction	1995	1999	2007	2009	2012
No. of Companies	1,049	220	171	776	118
Market Capitalization	73,902 million GBP	3,269,996 million Yen	9,673 million $	10,395 RMB billion	-
Market Capitalization (in Crs)	7,21,355	1,79,554	45,405	1,05,83,877	7,600
Relative Main Board	London Stock Exchange	NIKKEI	SGX	Shanghai Stock Exchange	BSE and NSE

Source: Website of Exchanges

Conclusion

In 2014-15, there were 39 small and medium enterprises (SMEs) who got listed on Indian bourses, with the aggregate public issues worth Rs. 273 crore. As on July 2015, more than 110 companies have come out with SME Public Issue on BSE and NSE, and have raised more than Rs. 900 Crs. Further, more than 7 companies have migrated from the SME platforms to the Main Board of the Stock Exchanges.

So far SME Exchanges have witnessed robust response as is evident from the fact that more companies have listed on SME Platform than on the Main Board since the launch. With growing confidence in the exchanges, SMEs are expected to attract greater interest from retail and institutions investors in the Public Issues on the SME Exchanges. The best way to see growth in this segment would be done not only by removing the barriers to sources of financing for SMEs but also by providing a knowledge ecosystem to such emerging enterprises. Regulators must also increase their interactions with these companies and work on removing some of the bottlenecks which will essentially lead to increasing investor interest and greater participation in the growth story of these emerging enterprises. India is at the cusp of growth and development. Capital flows towards emerging companies will add much needed impetus to the growth story of India. Emerging enterprises have the promise and the zeal to take India on to this growth trajectory – as long as it is well supported by a growth ecosystem fueled capital.

FACTORING AS A **RECEIVABLE MANAGEMENT TOOL**

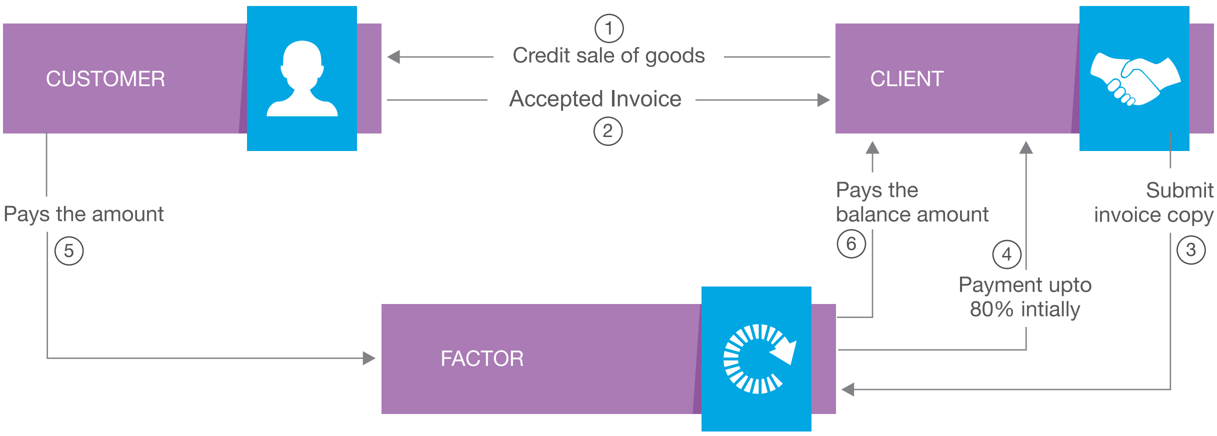
Businesses can execute trade transactions in higher number and value when its cash conversion cycle works in an optimal manner. A business may earn high revenues from its transactions however the lack of liquidity to fund operations may result in a loss of opportunities on the revenues that it may be able to generate. Factoring has become an accepted means of cash flow management for companies globally as well as in India.

Factoring is a financial transaction and a form of debtor financing in which a business sells its accounts receivable (i.e., debtors) to a third party (factor) at a discount. Unlike a bill discounting facility, factoring involves a continuous relationship between a factor and a seller, to finance and administer the receivables of the latter. Factoring companies pay cash against the credit sales of the client, and obtain the right to receive the future payments on those invoices from the debtors of the clients. Such factoring services have proven to be a very effective tool of debtor management and cash management especially for SMEs, who have poor or deficient working capital arrangements, and where they are selling to large companies and conglomerates.

Factoring Mechanism

There are three parties directly involved in a factoring transaction: “Factor” who purchases the receivables, “Client” who sells receivables and the “Customer” of the client who has a financial liability that requires him /her to make a payment to the client. A typical flow of events in a factoring transaction is as under:

- The customer (buyer of goods) places an order with the client (seller of goods) with agreed credit period and other terms and condition.
- The factor and the client enters into a factoring agreement to manage and finance the receivables of the client.
- The client supplies goods to the customer on credit and the invoice with the notice to pay the factor is sent along with the goods.
- The copy of the invoice covering the above sale is sent to the factor who maintains the sale ledger.
- The factor makes immediate payment towards the invoice as per agreed terms. (usually 80-95% of the invoice value).
- The buyer settles the invoice on expiry of credit period allowed to the factor.
- The balance (20%-5%) less the cost of factoring is paid by the factor to the client.



Salient Features of Factoring

i. Credit Cover

The factor takes over the risk burden of the client and thereby the client's credit is covered through a credit insurance. This is particularly so in case of Non- Recourse Factoring.

ii. Cash Advances

The factor makes quick cash advances to the client as per the agreed terms and condition upon the receipt of the documents. In regular factoring arrangements, funding takes place on the next day of receipt of required documents thereby improving the client's liquidity. An improvement in the cash conversion cycle improves stock turnover and drives sales.

iii. Sales Ledgering

Since several documents are exchanged for the sale of goods, all details pertaining to the transaction are automatically computerized and stored by the factoring company.

iv. Collection Service

Once the factor provides the factoring advance to the client, such receivables become the factor's debts. The collection of cheques and other follow-up procedures are done by the factor in its own interest. This will enable the client to avoid creating a separate collections department and to that extent reduces operational costs.

v. Provide Valuable advice

The factors also provide valuable advice on country-wise and customer-wise risks. This is because the factor is in a position to know the companies of its country better than the exporter clients.

Hence, Factoring is a complete financial package that combines working capital financing, credit risk protection, accounts receivable book-keeping and collection services.

Types of Factoring

Domestic Factoring

Domestic factoring is a facility of factoring of account receivables generated out of sales within the country. The Seller assigns to the Factor the accounts receivables arising out of sales to buyers within the country on open account terms and receives payment to the extent of 80-95% from the Factor, based on the negotiated credit terms.

International Factoring

Under international factoring, the factoring company will advance 80-90% of the export invoice amount, in the same way as domestic factoring. However, there is increased documentation and it may involve an import factor on the other side representing the importer.

With Recourse and Without Recourse Factoring

While factoring covers several transactions in several industries, a basic difference in the type of transaction depends upon the recourse of the factor to the seller/client. In case of 'with recourse' factoring, the factor has legal recourse to the seller, in case the debtor fails to pay on maturity. Thus the factor acts as an agent for collection of bills and does not cover the risk of customer's failure to pay debt or interest on it. Alternatively, in non-recourse factoring, the factor does not have recourse to the seller in case of default, and bears the credit risk in case of the buyer's inability to pay.

Disclosed and undisclosed factoring

Under disclosed factoring, the debtor is informed of the assignment of debts to the factor, and is accordingly required to cooperate with the factor for future transactions and collections. Alternatively, under undisclosed factoring, the debtor is not informed of the agreement entered into between the seller and the factor. In this case, the debtor makes payments directly to the seller's account, and the factor is not directly involved in the debt collection process. Most of the factoring done in India is disclosed, which is also a common practice globally.

Impact of Factoring on Balance Sheet of the Client

Without factoring facility

Liabilities		Assets	
Creditors	1,500,000	Debtors	1,400,000
		Cash	1,00,000
Total	1,500,000		1,500,000

Factoring facility with recourse

Liabilities		Assets	
Creditors	1,500,000	Debtors*	-
Reserves**	(56,000)	Cash	1,444,000
Total	1,444,000		1,444,000

*Contingent liability of 1,400,000

Factoring facility without recourse

Liabilities		Assets	
Creditors	1,500,000	Debtors*	-
Reserves**	(56,000)	Cash	1,444,000
Total	1,444,000		1,444,000

Clean Balance Sheet. **Factoring charges debited to P&L account

Limitations of Factoring

- It may prove to be an expensive tool for small companies with smaller turnover wherein the customer base is not well recognized and established corporates.
- Factoring is not suitable for companies manufacturing and selling highly specialized items as the factor may not have sufficient expertise to assess credit risk involved in the transactions.

Factoring Market Scenario in India

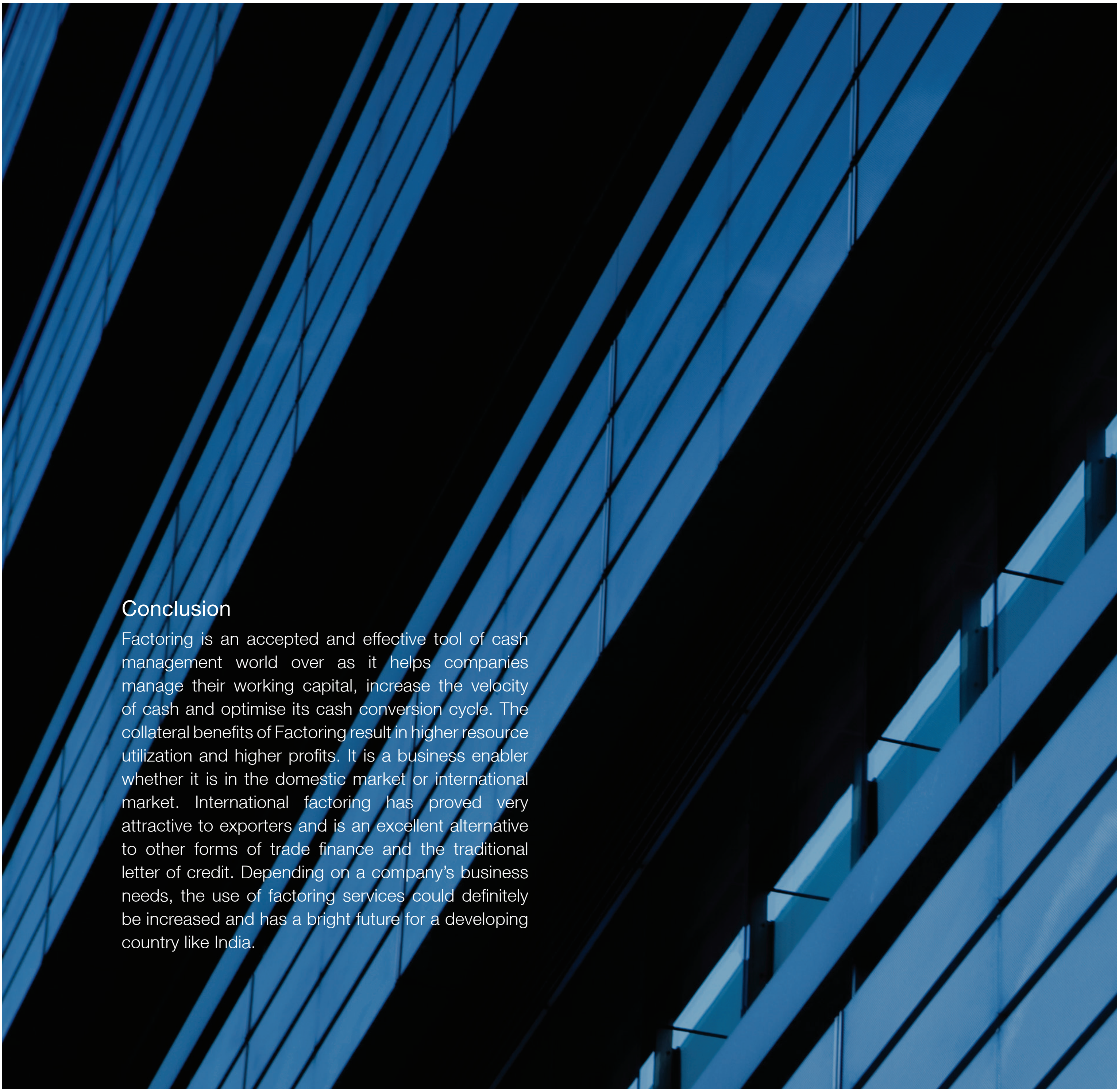
The potential for factoring is huge in the Indian market. The use of this facility is however not widespread in India as yet. As per the report of Factors Chain International, the global network of leading factoring companies and banks, total factoring volume stood at Euro 2347.51 bn and it grew at 6% over the last year volume. The factoring market was Euro 5.05 bn in 2007 and it stood at Euro 4.34 bn in 2014.

There are several factoring service providers now in India. The Indian market has faced some stumbling blocks starting from distribution reach to regulatory hurdles. The regulatory hurdle was addressed by The Factoring Regulation Act 2011, which came into force in February, 2012 and now regulates factoring business in India and provided the much-needed legal framework for factoring in India. The intention of the legislature behind introducing this Act was to promote the concept of factoring, making it more visible & organized and providing clarity on the process of assignment, rights and obligations of parties to contract for assignment of receivables. Some salient features of the Factoring Regulation Act, 2011 are as follows:

- Amendment to the Indian Stamp Act 1899, by inserting Section 8D, which exempts payment of stamp duty on all agreements for assignment of receivables in favour of a factor. The Act considerably reduced transaction costs for factoring arrangements, which were earlier liable for high rates of stamp duty.

- Every factor to register the particulars of every transaction of assignment of receivables in its favour with a central registry, set up under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (SARFAESI Act).2 A centralized database was aimed at reducing frauds and facilitating factors to verify whether a certain set of receivables had already been assigned in favour of a third party.

Despite the enactment of Factoring Regulation Act, 2011 the factoring market is not as robust as in international markets. It may be attributed to various reasons such as lack of awareness, low customer reach by factoring companies vis-à-vis Bank branch network, developing credit rating market, etc.



Conclusion

Factoring is an accepted and effective tool of cash management world over as it helps companies manage their working capital, increase the velocity of cash and optimise its cash conversion cycle. The collateral benefits of Factoring result in higher resource utilization and higher profits. It is a business enabler whether it is in the domestic market or international market. International factoring has proved very attractive to exporters and is an excellent alternative to other forms of trade finance and the traditional letter of credit. Depending on a company's business needs, the use of factoring services could definitely be increased and has a bright future for a developing country like India.

LISTING OBLIGATIONS AND **DISCLOSURE REQUIREMENTS**

SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 – Measures to Protect Shareholders' Interest

SEBI Act, 1992 was enacted to provide the establishment of a Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market and matters connected therewith. Till the promulgation of SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015, the listed entities were governed by a Listing Agreement (private agreement) between the Stock Exchange and the listed company, which governed all listing obligations and disclosure requirements. Therefore, if the enforcement of any provision had to be made under the listing agreement, SEBI had to go through the stock exchanges. SEBI could not directly access the issuer company, unless there was a breach of some other regulation.

Now, SEBI has taken direct regulatory control over the listed entities in India by notifying the SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015 on September 2, 2015 (the Regulations). These regulations have replaced the listing agreements earlier executed by companies with the stock exchanges and all earlier circulars regarding listing agreement, stand repealed.

Applicability of the Regulations

The Regulations apply to a listed entity[1] which has listed its specified securities[2] and designated securities[3] on Recognized Stock Exchanges. The new Regulations are a transformation from contractual to legal obligations and have consolidated and streamlined the provisions of existing Listing Agreements for different segments of the capital market into one composite set of Regulations covering:

- Equity Shares (including convertibles) issued by entities listed on the Main Board of the Stock Exchanges, on SME Exchange and on the Institutional Trading Platform
- Non-Convertible Debt Securities, Non-Convertible Redeemable Preference Shares, Perpetual Debt Instrument, Perpetual Non-Cumulative Preference Shares;
- Indian Depository Receipts;
- Securitized debt instruments and
- Units issued by Mutual Funds

Highlights of the Listing Regulations

- SEBI Listing Regulations have been subdivided into two parts (a) substantive provisions incorporated in the main body of Regulations and (b) procedural requirements in the form of Schedules to the Regulations. Listing Regulations have been compiled into 12 chapters, 103 regulations and 10 schedules.
- Chapter II of the SEBI Listing Regulations provide the broad principles in relation to disclosures and obligations of the listed entities. In the event of absence of specific requirements or ambiguity, these principles would serve to guide the listed entities.

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1. 2 (p) "listed entity" means an entity which has listed, on a recognized stock exchange(s), the designated securities issued by it or designated securities issued under schemes managed by it, in accordance with the listing agreement entered into between the entity and the recognized stock exchange(s);
2. 2 (zl) 'specified securities' means 'equity shares' and 'convertible securities' as defined under clause (zj) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;
3. 2 (h) "designated securities" means specified securities, non-convertible debt securities, non-convertible redeemable preference shares, perpetual debt instrument, perpetual non-cumulative preference shares, Indian depository receipts, securitized debt instruments, units issued by mutual funds and any other securities as may be specified by the Board;

- Chapter III of the SEBI Listing Regulations specifies common obligations of all listed entities i.e. compliance officer and his obligations, periodic disclosure & filing of information, ensure general obligation of compliance by KMP, directors, promoters or any person dealing with listed entity, co-operation with intermediaries, Share Transfer Agent, preservation of documents, Scheme of arrangement, payment of dividend, grievance redressal mechanism, fees and other charges to be paid to the Stock Exchanges.
- Chapter IV to IX of the SEBI Listing Regulations deal with obligations which are applicable to specific types of securities e.g. Specified Securities, NCDs / NCRPS or both, Perpetual Debt Instrument and Perpetual NCPS listed by banks, Special Purpose Distinct Entity issuing securitized debt instruments and trustees of Special Purpose Distinct Entity and IDRs.
- Chapter X and XI of the SEBI Listing Regulations list down the responsibilities of the stock exchanges to monitor compliance or adequacy / accuracy of compliance with the provisions of these regulations and to take action for noncompliance.
- Wherever possible and necessary, the provisions in the SEBI Listing Regulations have been aligned with those in the Companies Act, 2013
- Any company desirous of listing its securities shall enter into a listing agreement with the stock exchange. Existing listed entities are required to execute a fresh listing agreement within 6 months from date of notification of SEBI Listing Regulations.

Comparative Analysis of Listing Agreement and SEBI Listing Regulations

A comparative analysis of Listing Agreement and Listing Regulations shows that some of the earlier clauses have been kept in its original form. There is no change in following clauses:

- **Prior intimation about the board meetings** considering buyback, declaration/ recommendation of dividend, bonus, rights and convertible debentures issue, disclosure of shareholding pattern, submission of details regarding voting results of Board and General Meetings.
- **Submission and publication of audited or unaudited** quarterly and yearly to-date financial results, half yearly and audited financial results for the entire financial year except the change in time of submission within 30 minutes of the close of the Board Meeting as compared to 15 minutes earlier.
- **The independent** directors of the company shall hold at least one **meeting** in a year, without the presence of non-independent directors and members of management and all the independent directors shall strive to be present at such meeting.
- **Quarterly compliance report** on corporate governance to the Stock Exchange within 15 days from the close of quarter
- **Compliance Certificate** from either the auditors or a Practicing Company Secretary regarding compliance of conditions of corporate governance annexed with the directors' report.

New Important Insertions in the Listing Regulations

i. Corporate Governance Requirements for Unlisted Subsidiaries

- At least 1 Independent Director on the Board of listed entity shall be a director on the Board of unlisted material subsidiary.[4]
- Parent company's board should receive statement of all significant transactions and arrangement entered by its unlisted subsidiary
- Special resolution for approving asset sales of more than 20% of the total assets and sale of shares reducing the holding less than 50% of the material subsidiary

4. 16 (c) "material subsidiary" shall mean a subsidiary, whose income or net worth exceeds twenty percent of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year.

   Explanation.- The listed entity shall formulate a policy for determining 'material' subsidiary.

ii. Re-classification of Promoter

- In case of transmission/succession/inheritance, the inheritor shall be classified as promoter.
- Where an entity is professionally managed and does not have any identifiable promoter, the existing promoters may be reclassified as public shareholders subject to shareholders approval.
- An Entity becomes professionally managed only if
  - No person or group hold more than 1% of the paid up equity capital (exemption for Banks, Insurances, FIs, MFs & FPIs).
  - Former promoter and their relatives may act as KMP subject to shareholders approval for a period not exceeding 3 years from the date of shareholders' approval.
  - No special rights for former promoter through formal or informal arrangements.
- Outgoing promoter shall not
  - hold more than 10% of paid up equity capital.
  - have any special rights.
  - Outgoing promoters and their relatives shall not act as KMP for a period of more than 3 years from the date of shareholders' approval.

iii. Procedural Matters

- All activities relating to **physical and electronic share transfer facility** are maintained either in house or by Registrar and share transfer agent registered with the Board;
- **Policy for preservation of documents,** approved by its board of directors, classifying them in at least two categories as follows-
  - documents whose preservation shall be permanent in nature;
  - documents with preservation period of not less than eight years after completion of the relevant transactions, the listed entity may keep documents in electronic mode.
- **Filing with the Stock Exchange** on a quarterly basis, within 21 days from the end of each quarter, the number of investor complaints pending at the beginning of the quarter, those received during the quarter, disposed of during the quarter and those remaining unresolved at the end of the quarter
- Use electronic mode of **payment facility** for dividends etc.
- Submit to the Stock Exchange an **Annual Information Memorandum** in the manner specified by the Board from time to time.

iv. Website Disclosure

The regulations require a listed entity to place the Policy regarding determination of materiality framed and approved by Board of Directors authorizing one or more Key Managerial Personnel (KMPs) for such determination of materiality and for making disclosure to the stock exchange(s). Contact details of the authorized KMPs to be disclosed on its website. All disclosures made by the listed entity to stock exchange(s) to be hosted on its website for a minimum period of five years. The Policy may also include a provision for placing the documents on its archive and manner thereon.

Disclosure of Events/ Information

With a view to eliminate the element of subjectivity in the matter of disclosure of material events and to usher in a regime of transparent dissemination of information to the investors at large, Regulation 30 brings in a certain degree of objectivity on the subject of reporting material events. Broadly the events required to be disclosed in terms of Regulation 30 are divided into 3 parts:

- Disclosure of events which in the opinion of BOD is material;
- Disclosure of events deemed to be material;
- Disclosure of events based on application of the guidelines of materiality

Criteria for Determination of Materiality of Events/ Information:

The new regulations have provided the following criteria for determining the materiality of information/ events:

- the omission of an event or information, which is likely to result in discontinuity or alteration of event or information already available publicly; or
- the omission of an event or information is likely to result in significant market reaction if the said omission came to light at a later date;
  - In case where the criteria specified above are not applicable, an event/ information may be treated as being material if in the opinion of the board of directors of listed entity, the event / information is considered material.
  - The listed entity shall frame a policy for determination of materiality, based on criteria specified in this sub-regulation, duly approved by its board of directors, which shall be disclosed on its website.

Major Events

Events/ information	Description
Events considered material by Board of Directors	• BOD to authorize KMP to determine materiality of event/information • The contact details of KMP shall be disclosed to SE and website of the company; • Information to be disclosed within 24 hours from occurrence or explanation for delay after 24 hours of disclosure; • All information disclosed to remain hosted on the website of the company for 5 years and thereafter as per archival policy;
Deemed material events- (As specified in Para A of Part A of Schedule III)	• without any application of the guidelines for materiality: • acquisition of 5% or more, 2% or more incremental equity/ control, or voting rights direct or indirect; Sale or disposal of any unit/division/subsidiary • inorganic restructuring like schemes of arrangement, sale or disposal of units, business divisions, subsidiaries; • organic restructuring of share capital like issuance, forfeiture, split-ups, consolidation, transfer restrictions; and • Revision of ratings. • Board decisions pertaining to dividends, cash bonuses, buy-back, funding, issue of bonus shares, re-issue of forfeited shares, capital alterations, financial results, and voluntary delisting. . • disclose frauds and defaults committed by promoter, key managerial personnel or the company itself, as well as any arrest of the promoters or key managerial personnel; • Change in Directors, KMP, CFO, CS Auditor and Compliance officer • Corporate Debt Restructuring • One Time Settlement • Reference to BIFR and winding-up petition • Proceedings of Annual and Extraordinary General Meetings; • Amendments to Memorandum and Articles of Association. • Analyst or Institutional investor meet and presentations on financial results made by the listed entity to analysts or institutional investors; • Options to purchase securities under ESOP / ESPS Scheme

Events/ information	Description
Disclosure of events based on application of the guidelines of materiality (as specified in para B of Part A to Schedule III)	• Commencement or any postponement of commercial operations of any unit/division. • Change in the general character or nature of business due to arrangements for strategic, technical, manufacturing, or marketing tie-up, • Adoption of new lines of business or closure of operations of any unit/division • Capacity addition or product launch. • Agreements (viz. loan agreement(s) or any other agreement(s) which are binding and not in normal course of business) and revision(s) or amendment(s) or termination(s) thereof. • Disruption of operations of any one or more units or division • Litigation(s)/dispute(s)/regulatory action(s) with impact. • Effects arising out of change in the regulatory framework applicable to the listed entity • Fraud/defaults etc. by directors (other than key managerial personnel) or employees; • Reasons for giving of guarantees or indemnity or becoming a surety for any third party; • Granting, withdrawal, surrender, cancellation or suspension of key licenses or regulatory approvals.

The listed entities are required to make disclosure to the stock exchange within 30 minutes from the closure of the board meeting for the benefit of the investors to take informed decision. Non-compliance may result in fines, suspension of trading, freezing of promoter or promoter group shares or any other action as determined by SEBI. Under the old clause, there was no such requirement; and listed companies were only mandated to disclose the relevant information immediately. This permitted companies to make disclosures within a reasonable time period. With specified time-frame under the 2015 Regulations, companies have to ensure that the compliance officer prepares the disclosure statement in the prescribed formats and uploads it with the stock exchanges within 30 minutes. This short time frame may be unrealistic and is likely to create technical issues such as failure of connectivity, inadequate detailing, etc. if the prescribed formats are too elaborate.

Conclusion

The alignment of the Regulations with the Companies Act 2013 is a step in the right direction by SEBI and will go a long way in removing the ambiguity and confusion with respect to the Regulations. While the new Regulations on the one hand will pave the way for greater transparency and increase dissemination of information, on the other, in terms of volume, there will be an "information overload" for the Exchanges, with companies having to report even on relatively innocuous events. The gamut of disclosures to be made under Regulation 30 will also increase exponentially. The most conspicuous change that has been brought about in Regulation 30 as compared with Clause 36 of the listing agreement is that the application of discretion in the matter of deciding whether an event or information was "material" to warrant disclosure has been neutralized substantially. Under the erstwhile Listing Agreement, companies could hide material information by not disclosing information which was disquieting by using the stratagem of "lack of materiality".

PURCHASE PRICE ALLOCATION AND **VALUATION OF INTANGIBLES**

Introduction

Businesses grow organically and inorganically. Acquisitions of companies or of specified assets or undertaking have become an accepted means of getting into the next growth phase for companies. For those selling these undertakings, the reasons could be many – realizing value for investments made, decreasing debt, reorganizing business to dispose non-core assets and units etc.

An acquirer may consider acquiring a particular company, group of assets or undertaking for a variety of reasons – the capitalized value of assets and its future potential, the business generated from those assets or the value that could be realized from the business, assets, products, services and team by integrating the same into the company of the acquirer.

The means of such acquisitions are also several – demergers, slump sale, acquisition of share-holding etc. In any transaction of acquisition and sale, the key determining factor is the purchase consideration. What are the factors that contribute to the price for a business? The value of its tangible assets, inventory, cash? Are there other factors which have a bearing on the value? More often than not, business are acquired for the potential that can be garnered from the business by the acquirer, and for this at times a premium is paid over the book value or even the fair value of its assets. This premium is generally referred to as Goodwill or other recognizable Intangible Assets.

Present accounting and regulatory guidance state that businesses or undertakings that are acquired may be recognized in the books of the acquirer at cost or at fair value. In this article we shall talk about the process of allocating values to assets and liabilities acquired and the recognition and valuation of Intangible Assets in a Slump Sale scenario.

Slump Sale

Section 2 (42C) of the Income Tax Act, 1961 defines Slump Sale as 'transfer of one or more undertakings as a result of the sale for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales'.

Accordingly, the assets and liabilities of the seller are bundled and sold to the acquirer for a lump sum consideration without independent values attributed to individual assets and liabilities. However, the acquirer in effect is acquiring a variety of assets and liabilities which need to be recognized in the financial statements. In such cases, the acquirer will have to dissect the lump sum consideration and recognize assets and liabilities in its financial statements, that are separable, can be identified and can be assigned values.

As per Accounting Standard 10, where several fixed assets are purchased for a consolidated price, the consideration should be apportioned to the various assets on a fair basis as determined by competent valuers. Accordingly, the Acquirer is required to appoint valuers to determine the value of assets and liabilities to be recognized in the financial statements.

Under Ind AS 103, Business Combinations, which shall be applicable to companies with a networth of INR 500 crores or more from 1st April 2016, and thereafter to other companies in a systematic manner, also refers to a Purchase Method of accounting. Under Ind AS 103, the acquirer is required to recognize assets and liabilities acquired at their fair values including any intangible assets acquired in the acquisition.

Purchase Price Allocation

Purchase Price Allocation can represent a signification challenge for an organization, given the changes and complexities in modern accounting. In a Purchase Price Allocation, the equation is squared off when the purchase consideration is equal to the fair value of the assets and liabilities to be recognized. Hence on the one side there is the amount paid – Cash, Shares, Preference Shares or such other forms of consideration and the other side there is Net Working Capital, Tangible Assets, Intangible Assets and Goodwill.

Goodwill is essentially the residual value of purchase consideration less fair value of assets and liabilities (Net Assets).

In order to arrive at the value of assets and liabilities, there are three accepted approaches – Cost Approach, Market Approach and Income Approach. Depending on the type of asset the most appropriate approach or a combination of approaches is chosen.

- ### Tangible Assets

  In a business, tangible assets comprise of Land, Building, Plant and Machinery, Furniture and Fixtures, Computers, and other industry specific assets. Essentially the fair value of tangible assets is established using the market approach or at times the replacement cost approach as there is usually available market data available such as market value of land and building, depreciated replacement cost of plant and machinery etc. To arrive at the fair value of tangible assets a valuer needs to be aware of the market and the cost of assets prevailing in the market today or the market value that an asset will fetch today.

  The fair value of other tangible assets, such as specialized properties or plant and equipment, is often measured using the replacement-cost method or the cost approach.

- ### Intangible Assets

  Intangible assets are assets that lack physical form. Intangible assets can typically be classified into five groups:

Technology	Customer	Marketing	Artistic/Creative	Contract based
Patented or Unpatented Software	Customer Contracts	Trademarks	Copyrights to Music	Licensing arrangements
Database	Customer Lists	Distribution Networks	Copyrights to Movies, Plays	Royalty Arrangements
	Customer Relationships	Brands	Copyrights to Books	

*The list is only indicative and not exhaustive

There may be inherent intangible assets in a business which have not been recognized in the financial statements of the seller, however contribute to the business of the seller. For example, a company may not have recognized its brand in its financial statements, which could well be a contributing factor to sales and one of the motives behind the acquisition.

Hence, Intangible Assets that are identifiable, separable and can be valued are carved out of the purchase price and recognized in the financial statements of acquirer. Goodwill as a component is reduced to the extent of Intangible Assets that are recognized. However, key considerations are – at what value should an Intangible Asset be recognized and what are the methods of valuation?

- #### The Cost Approach

  The Cost Approach is based on the economic principle of substitution. Essentially, the premise is that acquirers will pay no more for an asset than it would cost them to develop or obtain that same or similar asset. The Cost Approach determines the value of Intangible Assets by aggregating the costs involved in their development. There are two distinct Cost Approach Methods: Reproduction Cost and Replacement Cost.

"Reproduction Cost" measures the expenditure necessary to reproduce the exact same asset. Alternatively, the "Replacement Cost" method measures the expenditure necessary to develop an asset with similar utility. In either method, it is essential that costs which are directly related to the development of the Intangible and no other. Another consideration is the valuation date – hence only those costs should be considered which have been or are expected to be incurred up to the valuation date.

This approach is usually most appropriate in cases where there is no economic activity to review – early stage start-ups that are pre-revenue as well as those intangible assets that are in process or under development for which revenue cannot be projected with reasonable assurance. In any event, the Cost Approach can often (but not always) be looked upon as providing a floor or minimum value for the intangible assets in question.

- The Market Approach

  Under the market approach, Intangible Assets are valued by benchmarking transactions to actual market transactions or sale, license or transfer of similar intangibles in the market. Although this approach is most practical and logical in its reasoning – the market delivers the best indication of price between a willing buyer and willing seller – the method suffers from the lack of adequate information that may be available in the market, especially for intangibles as they are not frequently traded in the market. Also, since most intangibles are considered unique, it may be difficult to find a transaction that is truly comparable. Nevertheless, when reliable and comparable market data is available, this approach is considered the most direct and systematic approach to determine the value of Intangible Assets.

- The Income Approach

  Under the income approach, the value of the intangible asset is derived from estimating the future income stream expected from the use of the intellectual property or intangible asset and then discounting it to its present value to arrive at the value of the intangible asset. This is one of the most widely used methods for valuing intangible assets as the inputs required for this method are relatively easily available and to a large extent fairly commensurate with business activities.

  One commonly made error in using this method is that often valuers do not differentiate between the business enterprise value and the value of the intellectual property that supports the business.

  In this article we shall discuss two commonly used methods under the income approach – Relief from Royalty Method and Multi-period Excess Earnings Method (MEEM)

Relief from Royalty Method

As the name suggests, the value of the intangible is calculated as the present value of royalties that a company is relieved from paying as a result of ownership of the assets. The Relief from Royalty Method measures value by estimating future revenue associated with the asset over its remaining economic life and then applying an appropriate royalty rate to the revenue estimate.

The application of an appropriate royalty rate isolates the portion of value that is attributable to the intangible assets from the value of the overall business operations. Royalty rates used in this method are usually market driven rates and hence lends additional credibility to the value conclusions. The present value of the estimated royalty payments is then calculated using a discount rate that best represents the risks involved in achieving the revenue forecasts and royalty streams.

Identification of an appropriate royalty rate is most essential to this method. The royalty rate should be of transactions that are comparable to the intangible asset being valued. Several parameters have a bearing on determining what is a comparable transaction – the type of asset, industry, geography, exclusivity, time-frame etc. The key to a reasonable valuation is to utilize the correct royalty rate in the calculation. A relative strength analysis of the assets will help to narrow the range of royalty rates to one which is most appropriate.

Multi-period Excess Earnings Method (MEEM)

MEEM is commonly used method for measuring the fair value of intangible assets such as Customer relationships and enabling technology. The method estimates revenues and cash flows derived from the intangible asset and then deduct portions of the cash flow that can be attributed to Supporting Assets or Contributory Assets that contributed to the generation of the cash flows. Contributory Asset charges could be assumed/economic rentals on account of use of operating capital, machinery and equipment, other rights, labour and land and buildings. The net amount so derived is the isolated excess cash flow generated from the use of the intangibles. From this amount tax costs are deducted.

These excess cash flows are then discounted to their present value using an appropriate discount rate to arrive at the value of the intangible asset.

Conclusion

Allocating the right values to the rights assets is imperative to any purchase transaction. It holds all the more importance in a transaction such as a Slump Sale where individual assets and liabilities are not allocated values in the sale transaction with the purchaser having to recognize individual assets and liabilities in its financial statements.

Valuation is a subjective exercise but is governed by certain methods, guiding principle and practices. While it may not be an exact science, it offers a reasonable basis to arrive at the fair value of assets and liabilities. One of the most important considerations in a Purchase Price Allocation is the recognition of Goodwill and Intangible Assets which have formed part of the acquisition and allocating fair values to such brands, trademark, knowhow, customer relationships and other intellectual property is imperative to a reasonable Purchase Price Allocation. The concept of Purchase Price Allocation has also assumed greater significance with evolving accounting regulations and other regulatory guidance.

About Vivro

Vivro is a Financial Services Group engaged in the business of providing Investment Banking, Corporate Finance, Corporate & Financial Advisory and Asset Resolution Services. Vivro Financial Services Private Limited is a Merchant Banker registered with the Securities Exchange Board of India (SEBI) and Vivro Capital Advisors Private Limited is a Company that provides Asset Resolution Services to Banks and Financial Institutions.

Our Team

Vivro is founded by experienced professionals who have been engaged in Capital Market and Corporate Finance services for the last three decades. Our company is supported by a team of more than 90 enthusiastic and motivated people from different backgrounds with varied educational accomplishments and expertise. The talent pool of our company comprises of Chartered Accountants, Company Secretaries, MBAs, Lawyers as well as Ex-Bankers who have held senior positions at various banks and financial institutions. This mix of people infuses elements of creativity and professionalism in our workplace, which adds tremendous value to the services that we offer. With a strong team in place, Vivro is able to deliver value added solutions, tailor-made to suit the requirements of our clients.

Our Value Proposition

Vivro has emerged as a knowledgeable and reliable partner for businesses both in India and Abroad. Vivro has catered to several companies over the years and it enjoys tremendous confidence from clients, investors, lenders, brokers and financial institutions. Our advisory services and our ability to access the right capital for the right investment opportunity have resulted in significant stakeholder value creation. Vivro has a disciplined and demonstrated process specifically tailored for each client and transaction to maximize value.

Capital Market Services

Our Capital Markets team assists private companies to raise capital from capital markets through Initial Public Offers of Equity & Debt, Placements, while they assist public limited companies in a host of capital market transactions ranging from Rights Issue, Qualified Institutional Placements, Institutional Placement Program, and various other Merchant Banking compliances relating to Takeover, Open Offers, Buybacks, Delisting, etc.

Corporate Finance

Vivro syndicates and structures debt finance through several instruments such as:

- Term Loans/ Project Loans
- Working Capital Finance/ Corporate Loans/Letter of Credits/Bank Guarantees/External Commercial Borrowings
- Factoring/Commercial Paper
- Inter Corporate Deposits, Structured Finance, Infrastructure Financing, etc.

Corporate Advisory

Our corporate advisory services:

- Private Equity and Venture Capital placement and advisory
- Mergers and Acquisitions: Buy/ Sell advisory as well as schemes of arrangement for corporate reorganization
- Valuation Services and Fairness Opinions
- ESOP Structuring and Valuation

Business Consulting

Our Business Consulting Services:

- Business and Expansion Plans and Strategies
- Corporate Governance and Reporting
- Corporate Organization
- Succession Planning
- Entry into India Services

Asset Resolution

Vivro is empaneled with over 30 banks and carries out effective strategies for recovery of NPA accounts, enforcement of assets under law, arranging for sale of assets or eventual settlement to affect Final Recovery of advances on behalf of these banks and financial institutions.

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