

SECURITIES REGULATION

Arjya B. Majumdar: abmajumdar@jgu.edu.in
Professor, Jindal Global Law School

Credits: 4

Credits Type: Law

Cross-registration: No

Pre-requisites: Economics, Property Law, Contracts I & II, Company Law I & II

COURSE DESCRIPTION (COURSE VISION): The issue or transfer of shares assumes a different colour when dealing with listed companies. While the fundamental statute applicable to the issue or transfer of shares remains the Companies Act, 2013, the regulation of such transactions becomes more important when they involve public money. The Securities and Exchange Board of India is an ever-present authority when it comes to the regulation of listed companies in India. Originally deriving its powers from the Capital Issues (Control) Act, 1947, SEBI in its present form came into existence with the SEBI Act, 1992.

In this course, we discuss the roles, functions and powers of SEBI, along with the various rules, regulations and notifications issued by SEBI. More importantly, we adopt a practical approach to various fund-raising transactions that listed companies as well as companies that are about to be listed enter into- transactions that are under the purview of SEBI.

Companies may raise funds in a number of ways- domestically and internationally, by way of a public issue or by a preferential allotment. We also delve into listed company acquisitions and the takeover code. Having begun our journey from the listing of a company's shares on a stock exchange, through further public offers, preferential allotments, overseas listing, takeovers, our course comes to an end with the delisting of a company.

We will also look at the general nature of public involvement in fundraising, including exotic and derivative instruments such as mortgage backed securities, crowdfunding and cryptocurrency.

The emphasis of this course will be on practical learning. It has been the bane of most law firms around the world that fresh recruits have excellent theoretical knowledge but few skills to convert that theory into practical application. Thus firms end up spending considerable amounts of time and money re-training law graduates into lawyers. This course seeks to bridge some of the gap between a law graduate and a lawyer. For students aimed at a career in corporate law, this course would be an excellent opportunity to differentiate themselves and thus

be a more attractive proposition when it comes to corporate law firm recruitment.

TEACHING METHODOLOGY:

This course will be taught with a practical outlook. A mixture of asynchronous lectures and the Socratic method in group tutorials will be used to impart instruction. Concepts and principles will be taught through discussion on the provisions of law and the interpretation of statutory provisions by courts. A strong emphasis will be placed on learning through case studies

Students are expected to read the assigned materials in advance of the class so that the lectures are made more fruitful by class discussions.

In addition to the lectures and class discussions, there will be an effort to include class presentations by the students, quizzes, seminars and/or guest lectures and workshops that will focus on mock corporate advising, negotiations and drafting.

INTENDED LEARNING OUTCOMES:

Course Intending Learning Outcomes	Weight	Teaching and Learning Activities	Assessment Tasks/Activities
By the end of the course, students should be able to:			Students' ability to grasp and critically evaluate the topics/issues discussed in the syllabus will be tested through continuous assessments through the semester as well as an end-term written examination.
(i) Have a sound understanding of the fundamentals of corporate law and the relevant aspects of capital markets transactions	30%	(i) Lectures: Students will be introduced to the key issues in securities regulations and will acquire the ability to critically analyze and apply the concepts learnt to practical problems.	
(ii) Comprehend how statutory provisions work in corporate practice.	30%		
iii) Apply:	40%		

Course Intending Learning Outcomes	Weight	Teaching and Learning Activities	Assessment Tasks/Activities
<p>(a) the principles learnt in context of advising clients and in drafting key corporate documents, and/or</p> <p>(b) the knowledge of corporate law to research legal problems and suggest solutions thereto.</p>		<p>(ii) Reading of statutes and other materials:</p> <p>Students will acquire knowledge of the principles of (and key issues pertaining to) corporate law in connection with the topics covered in the syllabus.</p>	

READING LIST (upto 10 select readings):

1. John Armour, Henry Hansmann, Reinier Kraakman, [The Essential Elements of Corporate Law: What is Corporate Law?](#)
2. [Sahara India Real Estate Corporation Limited & Ors v. Securities and Exchange Board of India](#)
3. [SEBI \(Issue of Capital and Disclosure Requirements\), Regulations, 2009](#)
4. [SEBI \(Listing Obligations and Disclosure Requirements\) Regulations, 2015](#)
5. [Regulating Equity Crowdfunding in India: Walking a Tightrope](#)
6. [Depository Receipts Scheme, 2014](#)
7. [SEBI \(Substantial Acquisition of Shares and Takeovers\) Regulations, 2011](#)
8. [Public M&As in India: Takeover Code Dissected](#), Nishith Desai Associates
9. [Insider Trading: A Moral Problem](#), Alan Strudler, Philosophy & Public Policy Quarterly
10. [Prevention of Insider Trading Regulations, 2015](#)
11. [Order against Axis Bank in the matter of KSK Energy Venture Ltd and Bombay Rayons Fashion Ltd.](#)

WEEKLY READING PLAN (WEEKLY OUTLINE):

A weekly plan is provided below:

MODULES	WEEK(S)
MODULE 1: INTRODUCTION/ BACK TO BASICS <ul style="list-style-type: none"> Any course that explores the manner in which capital markets are regulated must be grounded in the basics of commercial and company law. In this introductory module, we will revisit the Contract Act, 1872, the Sale of Goods Act, 1979 and the Companies Act 2013, in an effort to understand the jurisprudential basis of commercial law in India. Concepts such as companies, shares, share capital, shareholders, directors, promoters, will be revised. In terms of advanced concepts, we will discuss stock markets, intermediaries such as brokers, underwriters and merchant bankers. We will also consider the distinction between Private, Public and Listed Companies in order to set up the second module on public offerings. 	1-2
MODULE 2: PUBLIC OFFERINGS <ul style="list-style-type: none"> The seminal case of <i>Sahara v. SEBI</i> is the starting point of our discussion of public offerings. It sets out the definition of what constitutes a public offering and its distinction from a private placement. We will also discuss, in considerable detail, the provisions of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009. In particular, we will discuss <ul style="list-style-type: none"> The eligibility criteria for companies to offer securities to the public; Mechanism of the public offer process; Analysis of the offer document; The role played by SEBI The roles played by merchant bankers, auditors, securities lawyers, registrars to the issue, share transfer agents and depositories 	3 – 4
MODULE 3: PUBLIC OFFERINGS (CONTD) – RIGHTS AND BONUS ISSUES <ul style="list-style-type: none"> There are some public offerings that aren't really public in the truest sense of the term. Using our knowledge from the previous module, we examine how issues of shares to a selected group of individuals in terms of a rights issue or a bonus issue would qualify as a 'semi-' public offer. 	5

<p>MODULE 4: PIPE TRANSACTIONS</p> <ul style="list-style-type: none"> The nature of a public listed corporation is that there is a significant financial interest by members of the public. However, good business sense and the cost of capital may dictate that a public listed company may be required to 	6
<p>MODULE 5: CROWDFUNDING AND CRYPTOCURRENCY</p> <ul style="list-style-type: none"> What happens when the internet is used as a medium of communication and advertising to potential investors. 	7
<p>MODULE 6: OFFERINGS TO FOREIGN INVESTORS</p> <ul style="list-style-type: none"> What happens when a company is allowed to raise capital from outside India? This is commonly referred to as Foreign Direct Investment, but these transactions take on more complexity when the issuer company is listed. While Foreign Portfolio Investors may directly invest in Indian companies through a stock exchange, Indian companies may raise funds through the issuance of shares or hybrid instruments issued on foreign stock exchanges including GDRs, ADRs, FCCBs and FCEBs. 	8
<p>MODULE 7: ACQUISITION OF LISTED COMPANIES</p> <ul style="list-style-type: none"> While students would have been exposed to the nuances of transfers of shares, such transfers are heavily regulated in case of listed target companies. The SEBI Takeover Code determines the manner and process of which an acquirer may purchase a substantial stake in a listed company. After an initial discussion on the key provisions of the Takeover Code, we will be dissecting the takeover of United Spirits Limited by M/s Diageo plc. 	9 – 10
<p>MODULE 8: PREVENTION OF UNFAIR MARKET PRACTICES – INSIDER TRADING, MARKET MANIPULATION AND FRAUD</p> <ul style="list-style-type: none"> This module will examine the elements of trading violations, insider trading including misappropriation theory, market manipulation and financial and other fraud. Methods of surveillance, detection and deterrence will be explored. The concept of “Chinese Walls” will also be discussed. It will further include a comparative study of the insider trading regulations in the UK and US with 	11 – 12

the amended SEBI (Prohibition of Insider Trading) Regulations, 2015 in India	
MODULE 9: REGULATING INTERMEDIARIES	12 – 13
<ul style="list-style-type: none">• A market for shares, derivative securities and money cannot exist in a vacuum. There must be an entire ecosystem that surrounds and supports it for the market to be efficient. This module looks at the entities that work alongside issuer companies and shareholders to effectively provide 'signals' as to the veracity of issuers' claims and to provide a smooth and effective functioning of the market. Entities that we will be looking at include stock markets, merchant bankers, registrars to issues, underwriters, syndicate bankers, auditors, brokers and the role they play in securities markets in India.	
REVISION	14