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INDIA

Bhakta Batsal Patnaik, Bhargavi Mahajan and Malika Grewal¹

I INTRODUCTION

In the past year, global markets have experienced volatility on account of, inter alia, geopolitical tensions and rising inflation worries. India was no exception, with the markets witnessing a setback in initial public offerings (IPOs) in 2022. The IPO fundraising in India dropped to nearly half in 2022, compared with 2021. Aggressive interest rate hikes by the central government also contributed to the underperformance of the IPO markets in India.

Looking forward, the Indian economy is expected to grow at a steady rate of 5.9 per cent in 2023.² The companies recently listed on the stock exchanges in India are from diverse sectors and industries, including pharmaceuticals, healthcare, insurance, advisory services, manufacturing and digital services, food and beverages, fintech, entertainment, consumer goods and textiles, as opposed to previously, where only companies in certain sectors, such as banking, finance and information technology, would contemplate undertaking an IPO.

An IPO in India may comprise a fresh issuance of securities or an offer for sale of securities by the existing holders of securities, or both. Furthermore, an issuer proposing to list its securities on the stock exchanges in India may opt to list on the Main Board, the SME Exchange or the Innovators Growth Platform.

The SME Exchange is a trading platform of a recognised stock exchange that has nationwide terminals permitted by the Securities and Exchange Board of India (SEBI) but does not include the Main Board. The Innovators Growth Platform is a trading platform for the listing and trading of specified securities of entities that comply with the eligibility criteria laid down by SEBI. This chapter will be limited to the listing of equity shares on the Main Board as issuers predominantly opt to list on the Main Board in India.

II GOVERNING RULES

i Main stock exchanges

The two primary stock exchanges in India are BSE Limited (BSE) and the National Stock Exchange of India Limited (NSE).

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2 International Monetary Fund country data: India.

BSE was established in 1875 and was the first stock exchange in Asia and the fastest stock exchange in the world, with a speed of six microseconds.³ BSE provides a platform for trading in equities, currencies, debt instruments, derivatives and mutual funds, and in equities of small and medium-sized enterprises (SMEs).

The SME platform targets SMEs whose post-issue face value capital is less than or equal to 250 million rupees, and post issue paid-up capital is less than or equal to 100 million rupees.

The S&P SENSEX of BSE is the benchmark, market-weighted index that monitors the performance of the 30 largest, most liquid and financially sound companies across crucial sectors of the Indian economy that are listed at BSE.⁴

The NSE started trading in the equities segment (capital market segment) on 3 November 1994 and, within a short span of a year, became the largest stock exchange in India in terms of volumes transacted. The NSE is ranked as the third-largest stock exchange globally in terms of number of equity trades, as per the World Federation of Exchange.⁵ The NSE provides a platform for trading in equity and equity-linked products, including mutual funds and institutional placement programmes, and trading in derivatives and debt. The key index of the NSE is NIFTY 50. It monitors the performance of stocks of 50 companies accounting for key sectors of the economy.⁶

It is essential for the entities that wish to list on the stock exchanges in India to conform and comply with initial listing and continued listing requirements under the uniform listing agreement, the SEBI (Issue of Capital and Disclosure Requirements) Regulations 2018, as amended (the ICDR Regulations) and the SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015, as amended (the Listing Regulations).

The regulatory framework in India does not recognise the concept of dual listing. The securities laws and the company laws will have to be overhauled to facilitate dual listing.

ii Overview of listing requirements

Any issuer proposing to undertake an IPO must comply with certain independent requirements of the relevant stock exchange on which it intends to list its equity shares, as well as the eligibility requirements laid down by SEBI in the ICDR Regulations and the Listing Regulations. In addition, the issuer must also comply with the Companies Act 2013, as amended (the Companies Act 2013), read along with the rules thereto, the Securities Contract (Regulation) Act 1956 and the Securities Contract (Regulation) Rules 1957, each as occasionally amended, as well as the foreign investment laws in India.

The minimum percentage of equity shares required to be offered to the public in an IPO by the issuer is as follows:

- a at least 25 per cent of each class of equity shares must be offered to the public, if the post-IPO equity share capital of the issuer is less than or equal to 16 billion rupees;

3 BSE – Introduction, available at www.bseindia.com/static/about/company_overview.html (last accessed: 1 June 2023).

4 Asia Index Pvt Ltd, S&P BSE SENSEX, available at www.asiaindex.co.in/indices/equity/sp-bse-sensex (last accessed: 1 June 2023).

5 National Stock Exchange – About- Products and Services - Equity Market, available at <https://www.nseindia.com/products-services/about-equity-market> (last accessed: 1 June 2023).

6 National Stock Exchange – Indices, available at www.nseindia.com/products/content/equities/indices/nifty_50.htm (last accessed: 1 June 2022).

- b* a percentage of equity shares equivalent to 4 billion rupees must be offered to the public, if the post-IPO equity share capital of the issuer is more than 16 billion rupees but less than or equal to 40 billion rupees;
- c* at least 10 per cent of each class of equity shares must be offered to the public, if the post-IPO equity share capital of the issuer is more than 40 billion rupees; and
- d* a percentage of each class or kind of equity shares equivalent to the value of 5 billion rupees and at least 5 per cent of each such class or kind of equity shares issued by the issuer must be offered to the public, if the post-issue capital of the issuer calculated at offer price is above 100 billion rupees.

Companies that fall under points (b) and (c) are required to increase their public shareholding to at least 25 per cent within three years of the date the securities are listed.

Companies that fall under point (d) are required to increase their public shareholding to at least 10 per cent within two years and at least 25 per cent within five years of the date the securities are listed.

Requirements for undertaking an IPO

The issuer must meet certain criteria laid down by SEBI to undertake an IPO, including the following:

- a* it must have net tangible assets of at least 30 million rupees, calculated on a restated and consolidated basis, in each of the preceding three full years (of 12 months each), of which not more than 50 per cent are held in monetary assets;
- b* it must have an average operating profit of at least 150 million rupees, calculated on a restated and consolidated basis, during the preceding three years (of 12 months each) with operating profit in each of these preceding three years;
- c* it must have a net worth of at least 10 million rupees in each of the preceding three full years (of 12 months each), calculated on a restated and consolidated basis;
- d* if it has changed its name within the past year, it must have earned at least 50 per cent of the revenue, calculated on a restated and consolidated basis, for the preceding full year from the activity indicated by the new name;
- e* the issuer, its promoters, promoter group, directors or selling shareholders should not be debarred from accessing the capital markets by SEBI; however, the restriction is not applicable if the period of debarment is already over at the time of filing the draft offer document;
- f* the promoters or directors were not or are not also promoters or directors of any other company that is debarred from accessing the capital market under any order or direction of SEBI; however, the restriction is not applicable if the period of debarment is already over at the time of filing the draft offer document;
- g* the issuer, its promoters and directors should not be categorised as wilful defaulters or fraudulent borrowers by any bank or financial institution or consortium thereof, in accordance with the guidelines on wilful defaulters or fraudulent borrowers issued by the Reserve Bank of India (RBI);
- h* all existing partly paid equity shares of the issuer have been either fully paid up or forfeited; and
- i* any of the promoters or directors of the issuer should not be categorised as a fugitive economic offender under the Fugitive Economic Offenders Act 2018.

If the issuer does not satisfy the criteria specified in points (a) to (d), it may undertake an IPO through the book-building process, wherein at least 75 per cent of the net offer to the public must be compulsorily allotted to qualified institutional buyers, failing which the subscription monies must be refunded and the IPO fails.

Furthermore, in terms of the ICDR Regulations, an issuer cannot undertake an IPO if there are any outstanding convertible securities or any other rights that would entitle any person listing any option to receive equity shares.

Statutory lock-in

At least 20 per cent of the post-issue paid-up capital held by the promoters is required to be locked in for 18 months from the date of allotment in the IPO. However, if the majority of the issue proceeds, excluding the portion of offer for sale, are proposed to be utilised for capital expenditure, then the lock-in period shall be three years from the date of allotment in the IPO. The remaining shareholding of the promoters and all other shareholders is subject to a six-month lock-in period from the date of allotment in the IPO. However, if the majority of the issue proceeds, excluding the portion of offer for sale, is proposed to be utilised for capital expenditure, then the lock-in period for the remaining shareholding of the promoters shall be one year from the date of allotment in the IPO.

If the post-issue shareholding is less than 20 per cent, alternate investment funds, foreign venture capital investors, scheduled commercial banks, public financial institutions or Insurance Regulatory and Development Authority of India-registered insurance companies may contribute for the purpose of meeting the shortfall in minimum contribution as specified for the promoters, subject to a maximum of 10 per cent of the post-issue capital of the issuer without being identified as a promoter.

The 20 per cent lock-in requirement is not applicable if the issuer does not have any identifiable promoters.

Rejection criteria

SEBI may also reject the draft offer document in accordance with the ICDR Regulations and SEBI (Framework for Rejection of Draft Offer Documents) Order 2012 on various grounds, such as:

- a* the ultimate promoters are unidentifiable;
- b* the purpose for which the funds are being raised is vague;
- c* the business model of the issuer is exaggerated, complex or misleading, and the investors may be unable to assess risks associated with such business models;
- d* there is a sudden spurt in business before the filing of the draft offer document and replies to the clarification sought are not satisfactory;
- e* outstanding litigation that is so major that the issuer's survival is dependent on the outcome of the pending litigation; or
- f* outstanding litigation, including regulatory action, which is willfully concealed.

iii Overview of law and regulations

SEBI was established in 1992 in accordance with the provisions of the Securities and Exchange Board of India Act 1992, as amended. SEBI is an autonomous body established to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market and connected matters.

The ICDR Regulations, issued by SEBI, contain detailed provisions governing the IPO and provide detailed guidelines in relation to:

- a* disclosure requirements;
- b* formats of the various due diligence certificates to be provided by the merchant bankers appointed for the IPO;
- c* eligibility requirements;
- d* publicity guidelines;
- e* the method for undertaking the IPO, including the opening and closing of the issuance; and
- f* conditions relating to pricing in IPOs.

In addition to the ICDR Regulations, the Listing Regulations, issued by SEBI, cover principles, common obligations and continued disclosure requirements for all entities that have already been listed on any of the stock exchanges in the country. The Listing Regulations also lay down all the conditions of corporate governance to be followed by a listed entity.

When an entity is undertaking an IPO, it is required to comply with the SEBI (Prohibition of Insider Trading) Regulations 2015 (the Insider Trading Regulations) and the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 2011 (the Takeover Regulations), each as occasionally amended.

The Insider Trading Regulations, which were notified in January 2015, have widened the scope of insider trading regulations in India by making it applicable to entities that are proposed to be listed. No issuer is permitted to communicate, provide or allow access to any unpublished price-sensitive information relating to a company whose securities are listed or proposed to be listed, or any person, including other insiders, except where this communication is in furtherance of legitimate purposes, performance of duties or discharge of legal obligations. When an investor is investing in equity shares of the issuer, it must ensure that the acquisition does not attract the provisions of the Takeover Regulations.

In addition, an entity is required to comply with, *inter alia*, disclosure requirements specified under the Companies Act 2013, read along with the relevant rules thereunder. The entity is also required to comply with the various circulars and guidelines occasionally issued by the RBI in relation to the foreign investment.

The transfer of shares between an Indian resident and a non-resident does not require prior approval of the relevant government authorities, provided that activities of the investee company are under the automatic route under the foreign direct investment policy and do not attract the provisions of the Takeover Regulations; the non-resident shareholding is within the sectoral limits under the foreign direct investment policy; and the pricing is in accordance with the guidelines prescribed by the relevant government authorities, such as SEBI and the RBI.

III THE OFFERING PROCESS

i General overview of the IPO process

An IPO process in India typically takes seven to nine months; however, the timeline may vary depending upon factors such as the complexities involved in the transaction, including restructuring of the issuer, preparation of pro forma financial statements if the issuer has acquired or divested business recently, compliance with law, receipt of all necessary regulatory approvals and other market conditions.

The key parties involved in an IPO process are as follows.

Merchant bankers

The issuer is required to appoint at least one or more merchant bankers, registered under the SEBI (Merchant Bankers) Regulations 1992, and at least one of them must be the lead merchant banker. SEBI holds the merchant bankers primarily responsible for ensuring compliance with the disclosure requirements and other rules relating to the IPO process. The issuer can file the offer documents with SEBI only through a merchant banker.

Legal counsel

Indian legal counsel to the issuer undertakes legal due diligence, advises on the Indian laws applicable to the issuer and the IPO, and assists in drafting the non-business sections of the offer document. Merchant bankers typically appoint a separate law firm to act as their Indian legal counsel in the transaction.

International legal counsel undertakes legal due diligence, advises on international legal and regulatory issues relating to offer, sale and distribution of shares, and assists in drafting the business-related sections of the offer document in larger transactions.

Auditors

Auditors audit and restate the issuer's financial statements for inclusion in the offer document. They verify and certify the accuracy of the financial statements presented in the offer document, and also issue 'comfort letters' to the merchant bankers at various stages in the IPO process.

Registrar to the IPO

The registrar to the IPO is required to accept application forms from the investors in the IPO; process application forms; and coordinate the process for allotment of equity shares and refund of subscription monies where equity shares are not allotted to the investor.

Designated intermediaries

Designated intermediaries are entities that are authorised to collect the application forms from investors intending to subscribe in the IPO. Designated intermediaries include the merchant bankers, syndicate members, collecting depository participants, sub-syndicates or agents, self-certified syndicated banks (SCSBs), registrar and share agents, and registered brokers.

Sponsor banks

Sponsor banks are bankers to the issue registered with SEBI and have been introduced to effectuate a unified payments interface (UPI) as a payment mechanism for bids submitted by retail individual investors (RIIs) through intermediaries. They are appointed by the issuer and are responsible for:

- a* initiating a mandate request (i.e., requesting the RIIs to authorise blocking of funds that is equivalent to their application amount);
- b* receiving the status of the block request from the RII and sharing it with the stock exchanges; and
- c* ensuring subsequent debit of funds to the issuer's account in the case of allotment.

Advertising agency

An advertising agency is responsible for the publicity-related activities regarding the IPO and also provides the necessary information to the merchant bankers to enable them to submit a compliance certificate to SEBI.

Monitoring agency

The ICDR Regulations require that if the issue size of the IPO (excluding the offer for sale by selling shareholders) exceeds 1 billion rupees, the issuer is required to ensure that the utilisation of IPO proceeds is monitored by a credit rating agency registered with SEBI. The monitoring agency will be required to submit its report to the issuer in the format specified in the ICDR Regulations on a quarterly basis until 100 per cent of the proceeds of the issue have been utilised.

Brief overview of the timelines for the listing process

Below is a brief step-by-step overview of the listing process in India.

Step No.	Particulars	Timelines (due date)
1	Kick-off meeting and commencement of the due diligence process.	T-120
2	The legal counsel, along with the help of the issuer and the merchant bankers, conduct the due diligence of the issuer and prepare the draft offer document.	T-90
3	Execution of offer agreement and registrar agreement: the offer agreement between the merchant bankers and the issuer sets out the mutual rights, obligations and liabilities relating to the IPO. It sets out, among other things: • the roles and responsibilities of the merchant bankers; • the conditions precedent to the merchant bankers' obligations; • representations and warranties from the issuer and merchant bankers; • details of the indemnity provided by the issuer to the merchant bankers; and • provisions for termination of the merchant bankers' engagement. If the IPO has an offer for sale component, the selling shareholder is also a party to the offer agreement. The registrar agreement sets out the duties of the registrar and the responsibilities of the issuer and the registrar regarding each other.	T
4	Filing of the draft offer document (the draft red herring prospectus (DRHP)) with SEBI.	T
5	The DRHP filed with SEBI is made public for comments for at least 21 days after the date of the filing, by hosting it on the websites of SEBI, recognised stock exchanges where specified securities are proposed to be listed and the merchant bankers associated with the IPO.	T+21
6	Receipt of in-principle approval from the stock exchanges.	T+21–25
7	Receipt of SEBI final observations. ⁷ SEBI must provide observations or changes to be made to the DRHP within 30 days of: • the date of receipt of the DRHP; • the date of receipt of satisfactory reply from the merchant bankers, where SEBI has sought any clarification or additional information from them; • the date of receipt of clarification or information from any regulator or agency, where SEBI has sought any clarification or information from such regulator or agency; and • the date of receipt of a copy of the in-principle approval letter issued by the stock exchanges.	T+45
8	Filing of the updated DRHP with SEBI.	T+55
9	Grant of SEBI approval for filing with the relevant Registrar of Companies (RoC).	T+57

⁷ The issue may be opened within 12 months of the date of the issuance of the final observations by SEBI.

Step No.	Particulars	Timelines (due date)
10	Execution of the syndicate agreement, the share escrow agreement⁸ and the cash escrow agreement: the syndicate agreement sets out the roles and obligations of, and the relationship between, the merchant bankers and the other banks in the underwriting syndicate. This agreement lists the role and obligations of each syndicate member. The issuer and the selling shareholders, if any, are confirming parties to the syndicate agreement. The cash escrow agreement sets out the arrangement for the collection of the application or bid amount from anchor investors. This agreement is entered into among the issuer, the merchant bankers, the syndicate members, the escrow collection banks and the registrar (and the selling shareholders, in the case of an offer for sale). This agreement also provides for the arrangement by which the funds in the escrow accounts are transferred to the refund account or the public issue account, as applicable. The share escrow agreement sets out the terms whereby the selling shareholders agree to place their respective offered shares in escrow in accordance with the terms of that agreement.	T+57
11	Filing of the red herring prospectus (RHP) with the RoC. ⁹	T+58
12	Grant of approval by RoC.	T+59
13	Publication of the price band advertisement. ¹⁰	T+60
14	Transfer of shares from the selling shareholder account to the public issue account bank.	T+61
15	Opening of the IPO. ¹¹	T+62
16	Closing of the IPO. ¹²	T+65
17	Filing of the prospectus with RoC.	T+66
18	Execution of the underwriting agreement: an IPO must be underwritten by merchant bankers and their respective syndicate members for which purpose the underwriting agreement is entered into by the merchant bankers, the syndicate members and the issuer, on the pricing date. Underwriting agreements for Indian IPOs contain provisions such as representations and warranties, covenants, termination provisions and indemnities. The underwriting in Indian IPOs is usually a 'soft underwriting' as primarily the issuer offers securities directly to potential investors, and underwriters commit to purchase securities that remain unsubscribed after the pricing process is complete and the minimum subscription has been received.*	T+67
19	Finalisation of the basis of allotment.*	T+68
20	Allotment of shares to the applicants and credit of funds to the public issue account bank.*	T+69
21	Application for final listing and trading approvals with the stock exchange or exchanges.*	T+70
22	Commencement of listing and trading.*	T+71
* SEBI has reduced the duration of the period between issue closure to listing from six to three working days. This change has been implemented over the course of three phases, effective from January 2019. While Phase I is over and Phase II continues to operate with the existing T+6 timelines, Phase III will operate with the T+3 timeline. Phase III will reduce the time period by three days between closing of the issue and commencement of trading. Recently, SEBI has approved the T+3 timeline to be optionally operational for issues opening on or after September 1, 2023 and to be mandatorily operational for issues opening on or after 1 December 2023. SEBI is yet to release the detailed timeline for operating under the Phase III mechanism.		

- 8 The share escrow agreement is not required where there is no offer for sale component in the public issue.
- 9 The RHP filed with the RoC contains all the details except for information in relation to the issue price and underwriting commitment. This offer document can be used for the purposes of marketing.
- 10 The price band advertisement can be announced at least two working days before the issue opening according to the ICDR Regulations.
- 11 A public issue shall be kept open for at least three working days but not more than 10 working days when there is a revision in price band. The issue period can be extended for a further minimum of three days in the case of force majeure events, bank strikes and similar circumstances under the ICDR Regulations.
- 12 'Working days' means all days other than the second and fourth Saturday of the month, Sunday or a public holiday, on which commercial banks in Mumbai are open for business; however, with reference to the announcement of price band and the bid or offer period, 'working day' shall mean all days, excluding Saturdays, Sundays and public holidays, on which commercial banks in Mumbai are open for business; and in reference to the period between the bid or offer closing date and the listing of the equity shares on the stock exchanges, 'working day' shall mean all trading days of the stock exchanges, excluding Sundays and bank holidays.

The share escrow agreement is not required where there is no offer for sale component in the public issue.

The RHP filed with the RoC contains all the details except for information in relation to the issue price and underwriting commitment. This offer document can be used for the purposes of marketing.

The price band advertisement can be announced at least two working days before the issue opening according to the ICDR Regulations.

A public issue shall be kept open for at least three working days but not more than 10 working days when there is a revision in price band. The issue period can be extended for a further minimum of three days in the case of force majeure events, bank strikes and similar circumstances under the ICDR Regulations.

‘Working days’ means all days other than the second and fourth Saturday of the month, Sunday or a public holiday, on which commercial banks in Mumbai are open for business; however, with reference to the announcement of price band and the bid or offer period, ‘working day’ shall mean all days, excluding

Saturdays, Sundays and public holidays, on which commercial banks in Mumbai are open for business; and in reference to the period between the bid or offer closing date and the listing of the equity shares on the stock exchanges, ‘working day’ shall mean all trading days of the stock exchanges, excluding Sundays and bank holidays.

Confidential filing

The ICDR Regulations have been recently amended to introduce an alternative process over and above the existing process, allowing issuers to file their draft offer document with SEBI and the stock exchanges on a confidential basis (pre-filing option). The pre-filing option is available to all issuers seeking to list on the Main Board. The pre-filing option enables issuers to safeguard commercially sensitive information confidential for a longer period of time. While there are notable procedural differences in the pre-filing option, the process remains similar to the existing framework in several ways. The timeline provided above is for the existing process and not the pre-filing option.

ASBA process

SEBI has mandated that all investors (except anchor investors) applying in an IPO are required to only use the Application Supported by Blocked Amount (ASBA) facility for making payment. In the ASBA mechanism, the application money is blocked in the bank account provided in the application form until just prior to the allotment, or withdrawal or failure, of the IPO, or withdrawal or rejection of the application, as the case may be. If the bid is successful, the monies are transferred from the bank account to the public offer account opened by the issuer.

SEBI, in its effort to reduce the timeline for the period between issue closure and listing, has mandated the gradual discontinuation of the existing process of physical movement of application forms from intermediaries to SCSBs for blocking of funds for applications by individual investors through intermediaries. All applications submitted by individual investors to the intermediaries must be through ASBA with UPI as a payment mechanism. For public issues, UPI will allow the facility to block funds at the time of making an application.

ii Pitfalls and considerations

As highlighted earlier, SEBI may reject a draft offer document if it has reasonable grounds to believe that, inter alia, the ultimate promoters are unidentifiable, the purpose for which the funds are being raised is vague or there is an outstanding litigation that is so major that the issuer's survival is dependent on the outcome of the pending litigation.

Accordingly, the issuer must ensure that it does not trigger any rejection criteria prior to the filing of the draft offer document, as issuers whose draft offer documents are rejected are not allowed to access capital markets for at least one year from the date of the rejection, and the period may be increased depending on the materiality of the omission and commission. In addition, SEBI may initiate an action against the merchant bankers or the issuer, in accordance with applicable law.

The issuer is required to provide detailed disclosures in relation to the purpose for which the funds are being raised, including:

- a* the schedule of implementation;
- b* deployment of funds; sourcing of financing of funds already deployed;
- c* details of all material existing; or
- d* anticipated transactions in relation to utilisation of the issue proceeds or project cost with promoters, directors, key management personnel, associates and group companies of the issuer.

Furthermore, the amount for general corporate purposes cannot exceed 25 per cent of the amount raised by the issuer through the issuance of specified securities.

Accordingly, an issuer is not permitted to create war chests and must provide detailed disclosures in the offer document. An issuer is also not permitted to recoup its costs from the amount raised pursuant to the IPO. If there is a variation in objects, an exit offer shall be made by the promoters or shareholders in control of an issuer to the dissenting shareholders in terms of the Companies Act 2013 and the ICDR Regulations.

Identification of promoters has become increasingly complex in recent years owing to the increase in investment by financial and strategic investors. While certain financial and strategic investors have majority shareholding and nominee directors on the board of the issuer, these investors may not be identified as promoters given the nature of the investment in the issuer, and certain other considerations, such as lack of involvement in the day-to-day business activities of the issuer.

Identification of promoters is subjective and must be dealt with case by case. For example, the issuer would have to check whether any entity:

- a* has been identified as a promoter in any licences, borrowings, material agreements such as the shareholders' agreements, regulatory or corporate filings;
- b* controls management or policy decisions;
- c* is entitled to control the decisions of the board of the issuer; and
- d* is entitled to appoint the majority of directors of the issuer.

Once the issuer identifies the promoter, extensive disclosures about the promoter are required to be included in the offer document. This includes legal proceedings involving the promoters, and the source of funds from which the securities of the issuer were purchased.

In addition, if the promoter is an individual, details such as date of birth, age, educational qualifications, experience, past positions held and other directorships must be

provided. If the promoter is a company, details such as a brief history of the promoter, date of incorporation, change in activities, present activities, names of the natural persons in control of the promoter and details of change of management of the promoter must be provided.

In terms of stock exchange requirements, no single shareholder should be accorded any special rights when the issuer is undergoing an IPO. Accordingly, all special rights granted to a permanent shareholder are required to fall away at the time of listing of equity shares in the relevant stock exchanges. This leads to a fair amount of discussion with the financial, private or strategic investors who prefer to retain a seat on the board of directors of the issuer or certain policy, operational and information covenants, if the investor continues to retain a significant shareholding after the listing of the equity shares of the issuer.

Until recently, if a selling shareholder held convertible securities and intended to offer equity shares in the IPO, it was required to convert all the convertible securities into equity shares prior to the filing of the DRHP to offer those equity shares for sale in the IPO. It usually takes four to six months from the date of filing of the DRHP to list equity shares on the recognised stock exchanges. The conversion of securities prior to the filing of the DRHP exposes the selling shareholders to greater risks owing to the lack of visibility on the pricing and the timing of the IPO for a long period of four to six months.

The ICDR Regulations now allow selling shareholders to convert fully paid-up compulsorily convertible securities prior to filing of the RHP (in the case of a book-built issue), provided that the selling shareholder complies with the holding period of one year prior to the DRHP in respect of the securities and provides full disclosures of the terms of conversion or exchange in the draft offer document. This change was incorporated to provide the selling shareholders more flexibility and visibility on the pricing and timelines for the completion of the IPO.

iii Considerations for foreign issuers

A foreign issuer cannot list its equity shares on the stock exchanges in India. A foreign entity can access the Indian capital markets through issuance of Indian depository receipts (IDRs). IDRs are denominated in INR and issued by a depository. A foreign issuer proposing to issue IDRs should also:

- a* be listed in its home country for at least three preceding years;
- b* not be prohibited from issuing securities by any regulatory body; and
- c* have a track record of compliance with securities market regulations in its home country.

There has only been one issuance of IDRs in India to date, namely by Standard Chartered PLC.

If an Indian subsidiary of a foreign entity proposes to list its equity shares, the foreign entity will be named as a promoter. If the immediate holding company is a shell company and does not undertake any substantial business, the entity that has ultimate control over the Indian subsidiary will also be required to be named as the promoter.

The overall ceiling limit for foreign portfolio investors (FPIs) is the sectoral cap applicable to the issuer (in accordance with the Consolidated FDI Policy Circular of 2020), and for non-resident Indians (NRIs) and overseas citizens of India (OCIs) on a repatriation basis, 10 per cent of the paid-up capital of the issuer. The ceiling limit for NRIs and OCIs can be raised to 24 per cent, subject to the approval of the board of directors and the shareholders of the issuer. The RBI monitors the ceiling limits on a daily basis and has an effective monitoring mechanism in place to ensure that FPIs, NRIs and OCIs do not exceed the aggregate ceiling limit.

With effect from 22 April 2020, the Consolidated FDI Policy Circular of 2020 provides that the prior approval of the Indian government is required for any investment, subscription, purchase or sale of equity instruments by entities of a country that shares a land border with India or where the beneficial owner of an investment into India is situated in or is a citizen of any such country.

In the event of transfer of ownership of any existing or future foreign direct investment in an entity in India that, directly or indirectly, results in the beneficial ownership falling within the above-mentioned restriction or purview, such subsequent change in the beneficial ownership will also require approval of the government.

IV POST-IPO REQUIREMENTS

Once an entity is listed on the stock exchanges, it must comply with all the requirements of the Listing Regulations, as applicable. The Listing Regulations require the listed entity to make disclosures of the following:

- a* any events and information to the stock exchange that is ‘material’ in the opinion of the board of directors of the entity;
- b* the shareholding pattern of the entity; and
- c* quarterly and annual stand-alone financial results within 45 days of the end of each quarter other than the last quarter, to the stock exchanges on which the securities of the entity are listed.

All listed companies are also required to comply with other SEBI regulations, including the Insider Trading Regulations in relation to treatment of unpublished price-sensitive information. According to the Insider Trading Regulations, the board of directors of every entity whose securities are listed on a stock exchange is required to formulate and publish on its official website:

- a* a code of practices and procedures for fair disclosure of unpublished price-sensitive information, which it would follow to adhere to each of the principles set out in the Insider Trading Regulations; and
- b* a code of conduct to regulate, monitor and report trading by employees and other connected persons towards achieving compliance with the Insider Trading Regulations, adopting the minimum standards set out therein.

The listed entity must also comply with the public offer requirements under the Takeover Regulations when there is a direct or indirect acquisition of control above the minimum thresholds as prescribed under those regulations.

V OUTLOOK AND CONCLUSIONS

The Indian capital markets have seen an unprecedented level of activity in the past year. This is largely driven by high liquidity in the market as a result of stimulus measures. The market is expected to continue being active this year.