client alert

March 21, 2025

cyril amarchand mangaldas
ahead of the curve

IPOs Post the SEBI ICDR Amendments 2025

The Expert Committee for facilitating ease of doing business for listed entities in India and harmonization of the provisions of Securities and Exchange Board of India Issue of Capital and Disclosure Requirements Regulations, 2018 (**SEBI ICDR Regulations**) and Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (**SEBI LODR Regulations** and collectively, the **SEBI Regulations**) was constituted by Securities and Exchange Board of India (**SEBI**) on August 24, 2023.

The Committee sought suggestions and comments from the public and regulated entities to simplify, ease and reduce the cost of compliance under various SEBI regulations, and published a detailed report on its recommendations relating to the SEBI Regulations and proposals for effective harmonisation of the provisions of these regulations

On March 8, 2025, the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2025 (**SEBI ICDR Amendments 2025**) were published in the Official Gazette. Amendments in relation to initial public offerings (**IPOs**) are effective immediately, and apply to all IPOs going forward.

In this note, we highlight the key updates in relation to the regime on IPOs under the SEBI ICDR Regulations that are important from an IPO preparation as well as procedural point of view.

Eligibility for IPOs – permitting outstanding stock appreciation rights till RHP

It has been a contentious point for several issuers that as an employee incentive or reward structure, only employee stock options are permitted to continue post filing of the draft red herring prospectus (**DRHP**) in an IPO. Issuers have

therefore had to roll back or terminate other incentive structures, including stock appreciation rights, phantom stocks etc. when filing for an IPO.

Stock appreciation rights, or SARs, were specifically called out by the Expert Committee, noting that the Securities and Exchange Board of India (Share Based Employee Benefits and Sweat Equity). Regulations, 2021 (the **SBEB Regulations**) recognize SARs as a share-based employee benefit, and that Regulation 56 of the SEBI ICDR Regulations permits a further issue of shares after the date of filing of the DRHP, provided that such issuance is disclosed in the DRHP.

The SEBI ICDR Amendments 2025 now permit SARs to remain outstanding until the date of filing the red herring prospectus (**RHP**). This is subject to the outstanding SARs being granted to employees (and no other class of shareholders) pursuant to a stock appreciation right scheme, and these being fully exercised for equity shares prior to the filing of the RHP (the prospectus in case of

fixed price issues). Further, disclosures regarding such SARs, the scheme, and the total number of equity shares resulting from the exercise of such rights would need to be made in the DRHP. However, the amendments do not provide for the treatment of purely cash-settled SARs, and whether such schemes can continue post DRHP filing.

Relaxations from lock-in requirements as presently applicable for ESOP-converted equity shares have also been made available for equity shares allotted to employees under stock appreciation rights plans. Further, it has been clarified that such relaxation from lock-in is also applicable on shares received pursuant to bonus issue against equity shares allotted pursuant to ESOP and SARs.

Unlike ESOPs which can survive listing, all SARs will necessarily have to be exercised prior to listing (at the RHP stage in case of book-built issues). It will be interesting to see how unvested SARs will be treated at the RHP stage, or how such schemes are viewed at the DRHP stage vis-à-vis the vesting period. It will also be of interest to see how the number of equity shares to be allotted pursuant to SARs is determined at the DRHP stage for the purposes of disclosure, particularly in light of other issuances which may be undertaken in parallel or during the IPO timeline, such as conversion of outstanding convertible securities or pre-IPO primary or secondary placements.

Thresholds for participation in an offer for sale as part of an IPO

Regulation 8A of the SEBI ICDR Regulations restricts the quantum of shares that can be offered for sale by selling shareholders in an IPO, if the offer is being undertaken under Regulation 6(2) of the SEBI ICDR Regulations i.e. an issuer is loss-making or does not meet the financial track record criteria set out in Regulation 6(1) of the SEBI ICDR Regulations.

Accordingly, in Regulation 6(2) IPOs, shareholders with over 20% of the pre-IPO shareholding on a fully-diluted basis cannot offer more than 50% of *their pre-IPO shareholding* in the IPO, and shareholders with less than 20% of the pre-IPO shareholding cannot offer more than 10% of *the pre-IPO shareholding of the company* in the IPO. These thresholds are calculated on a fully diluted basis.

The Expert Committee recommended that the SEBI ICDR Regulations should clarify that the total shares that are eligible to be sold by a shareholder, whether as part of the IPO or through other secondary transfers prior to the IPO, do not exceed the thresholds set out under Regulation 8A and that such thresholds would be calculated with reference to shareholding as on the date of filing the DRHP.

These amendments have been reflected by way of an explanation added to Regulation 8A. The regulation seems to bucket both pre-IPO secondary transfers as well as shares offered for sale to the public in the same category, and is in line with the regulatory expectation based on feedback in recent transactions on accounting for transfers outside the offer for sale while calculating the thresholds.

Clarifications with respect to minimum promoters' contribution and lock-in of securities

Pursuant to the SEBI ICDR Amendments 2025, certain clarifications have been made to provisions relating to determination of minimum promoters' contribution.

It has been clarified that the price per share for determining the eligibility of securities acquired in last one year of filing of the DRHP for minimum promoters' contribution under Regulation 15 of the SEBI ICDR Regulations would need to be computed after adjusting for corporate actions undertaken by an issuer such as share split, bonus issue etc. The amendment is aimed at disqualifying those shares where the subscription price during the latest capital raising round (shortly before DRHP filing) is higher compared to the IPO price.

Under the SEBI ICDR Regulations, in case a majority of the proceeds of the fresh issue component of the IPO is proposed to be utilized for capital expenditure, then the promoters' contribution shall be locked-in for a longer period of three years from the date of allotment in the IPO, as against 18 months, which is applicable in other instances. Similarly, in such a situation, the promoters' holding in excess of minimum promoters' contribution shall be locked-in for a longer period of one year, and not six months. The term "capital expenditure" in this context is defined to include civil work, miscellaneous fixed assets, purchase of land, building and plant and machinery, etc.

SEBI has recently been extending this longer lock-in period to also apply if the majority of the fresh issue proceeds are used for the repayment of loans availed for any capital expenditure, and therefore such repayment of loans to also fall within the purview of "capital expenditure". It was noted that the issue proceeds should not be used

as a means of bridge financing for capital expenditure, without the other checks and balances that are already contemplated under the SEBI ICDR Regulations for such objects.

Accordingly, clarificatory language has been included pursuant to the SEBI ICDR Amendments 2025, that the definition of "capital expenditure" would include repayment of existing loan(s) that may have been availed for the purpose of capital expenditure. Arguably, if the capital expenditure for which such loan was availed was towards underlying work which has been completed, SEBI could have relaxed this requirement. However, they have not made that distinction.

Voluntarily proforma financials and financial statements of acquired or divested subsidiaries/businesses

Voluntary proforma financial information has become increasingly relevant in recent years, with several recent issuers being acquisitive in nature and now with companies looking to undertake IPOs after reverse mergers.

Proforma financial statements for an IPO are mandatorily required for the last completed financial year and interim period, where there has been a 'material' acquisition or disposal after the latest period for which financial information is disclosed in the offer document, but before the date of filing of the offer document. Proforma financial statements are required to be prepared in accordance with the guidance note issued by the Institute of Chartered Accountants of India from time to time and certified by the statutory auditor or peer-reviewed chartered accountants.

As per the extant SEBI ICDR Regulations, an issuer could voluntarily choose to provide proforma financial statements of acquisitions even when they are below the above materiality threshold. However, the regulations also mentioned that in case of one or more acquisitions or divestments, one combined set of proforma financial statements should be presented.

The SEBI ICDR Amendments 2025 have now provided more detail on inclusion of proforma financial information on a voluntary basis. The regulations now clarify that an issuer may voluntarily choose to provide proforma financial statements of acquisitions or divestments (i) even when they are below the prescribed materiality threshold, or (ii) the acquisitions or divestments have been completed prior to the latest period for which financial information is disclosed in the DRHP or RHP. Further, the proforma financial statements may be disclosed for such financial periods as determined by an issuer.

An issuer may also voluntarily include financial statements of the business or subsidiary acquired or divested, provided that such financial statements are certified by the auditor (of the business or subsidiary acquired or divested) or peer reviewed chartered accountants. In case of one or more acquisitions or divestments, one combined set of Proforma financial statements should be presented. Where the business acquired/ divested does not represent a separate entity, general purpose financial statements may not be available for such business. In such cases, combined/ carved-out financial statements for such businesses is required to be prepared in accordance with applicable ICAI guidance notes, standards on assurance engagement

or guidelines. Separately, it continues to be discussed whether historic audit reports for such acquired/ divested companies would be sufficient, or a separate certificate or report needs to be given by the target auditors for inclusion in the offer documents.

An interesting aspect that continues to be explored is on how proforma financials need to be presented in case of multiple acquisitions and/or divestments. The SEBI ICDR Regulations provide that a combined set of proforma financial information should be presented for multiple acquisitions, but do not clarify whether these need to be multiple "material" acquisitions. Accordingly, in case of voluntary proforma financials, would this mean that all acquisitions or divestments, whether or not material, need to be taken into account for preparation of the proforma financial information.

Alignment of qualifications of the compliance officer under the SEBI ICDR Regulations and SEBI LODR Regulations

The SEBI ICDR Regulations require issuers to appoint a compliance officer to monitor compliance of securities laws and for redressal of investors' grievances. While the qualifications for appointment of a compliance officer under the SEBI LODR Regulations were specified (i.e., such person must be a qualified company secretary), no such stipulations were prescribed under the SEBI ICDR Regulations.

Accordingly, the requirement of qualification as a company secretary to be appointed as the compliance officer has now been introduced under the SEBI ICDR Regulations.

Additional disclosures and reporting events

Pursuant to the SEBI ICDR Amendments 2025, certain disclosure and reporting requirements have been added.

Shareholding of promoters, promoter group and additional top 10 shareholders: Details of their pre-issue shareholding and post-issue shareholding (based on price band) as on the date of the pre-issue and price band advertisement and post-issue shareholding (based on final price) as at allotment in the prospectus would be required to be disclosed

Material agreements: Agreements entered into by the shareholders, promoters, promoter group entities, related parties, directors, key managerial personnel, employees of an issuer or of its holding, subsidiary or associate companies, among themselves or with an issuer or with a third party, solely or jointly, which, either directly or indirectly or potentially or whose purpose and effect is to, impact the management or control of an issuer or impose any restriction or create any liability upon issuer, shall be disclosed, including disclosure of any rescission, amendment or alteration of such agreements thereto, whether or not the issuer is a party to such agreements.

This has been aligned with disclosure requirements under the SEBI LODR Regulations. These regulations provide two clarifications, i.e. (i) such agreements entered in the normal course of business would not be required to be disclosed unless they, either directly or indirectly or potentially or whose purpose and effect is to, impact the management or control of the listed entity, and (ii) the term "directly or indirectly" includes agreements creating obligation on the parties to such agreements to ensure that a listed entity shall or shall not act in a particular manner.

Outstanding legal and regulatory proceedings: : In order to align with disclosure requirements under the SEBI LODR Regulations that would apply to an issuer once listed, materiality thresholds for disclosure of civil litigations in the IPO offer documents have been aligned with the thresholds prescribed under the SEBI LODR Regulations, being the lower of: (a) 2% of turnover, as per the issuer's latest annual restated consolidated financial statements, (b) 2% of net worth, as per the issuer's latest annual restated consolidated financial statements, except in case the arithmetic value of the net worth is negative; (c) 5% of the average of absolute value of profit or loss after tax, as per the issuer's last three annual restated consolidated financial statements, (d) materiality defined by the board of directors of the issuer and disclosed in the offer document.

Similarly, to align with the SEBI LODR Regulations, disclosure of criminal proceedings involving and actions by regulatory authorities and statutory authorities, including tax matters, against key managerial personnel and senior management of an issuer have been mandated to be included in the offer documents.

It is pertinent to note here that in February 2025, the Industry Standards Forum (comprising of representatives from ASSOCHAM, CII and FICCI), under the aegis of the Stock Exchanges, has formulated industry standards, in consultation with SEBI, for effective implementation of the requirement to disclose material events or information under Regulation 30 of the SEBI LODR Regulations. Per such standards, impact of pending litigations or disputes needs to be analysed on the basis of the prescribed tests of expected impact on turnover to 2% of consolidated turnover; or expected impact on profit/ loss to 5% of average profit or loss after tax, and not net worth. Accordingly, issuers may look to identify material litigations based on only turnover and profit or loss after tax.

Reporting of transactions: In addition to the requirement to notify all transactions in securities by the promoter and promoter group between the DRHP filing date and issue closing date to the stock exchanges within 24 hours of the transaction, it has now been mandated that any proposed pre-IPO placement *disclosed in the draft offer document shall* be reported to the stock exchanges within 24 hours of such pre-IPO transactions (in part or in entirety). This aligns with an advisory by the Association of Investment Bankers of India (**AIBI**) that was issued in July 2023 setting out the details to be provided to stock exchanges for pre-IPO placements and transactions of shares aggregating up to 1% or more of the paid-up Equity Share capital of an issuer by the promoters or members of the promoter group.

While the regulations do not clarify the extent of information to be notified and made public, the Expert Committee had suggested that details related to such pre-IPO transactions (such as the number of shares issued, pricing, total consideration raised through such placement etc.) would be available to public investors subsequent to the transaction and visible to all public investors on websites of the stock exchanges, along with other issue related documents / information.

What is also not clearly set out is whether this requirement extends only to the primary pre-IPO placement for which disclosures are made specifically or does this extent to any transactions by selling shareholders in view of the amendment to Regulation 8A as discussed above, and if any pre-IPO transactions other than these would be covered.

Clarifications on certification and presentation requirements for proposed objects of the offer

Should an issuer propose to repay loans using the fresh issue proceeds, a certificate is required from the statutory auditor certifying the utilization of loan for the purposed availed. Providing relaxation from this requirement, it has now been provided that the certificate for utilization of the loan can be obtained from a peer reviewed chartered accountant instead of statutory auditor, (i) for period not audited by the current statutory auditor; or (ii) if the loan was for subsidiary and current statutory auditor of an issuer is not the statutory auditor of its subsidiary.

If one of the objects of the issue is utilisation of the issue proceeds for long-term working capital, certain additional disclosures are required to be presented on a standalone basis. It has now been clarified by way of an amendment to Schedule VI of the SEBI ICDR Regulations that these disclosures will be made based on audited standalone financial statements. Further, if there is any restatement or adjustment in the restated consolidated financial statements which may have impact on the audited standalone financial statements (again, difficult given restatement is done on consolidated financial information), then such standalone financial statements would also need to be restated.

Timeline and format of issue-related statutory advertisements

Public announcement for DRHP filing

Where the DRHP is filed around public holidays, issuers would face difficulties in ensuring that the public announcement for DRHP filing is published in all editions of the statutory newspapers within two days of the date of filing.

Noting this, it was suggested that the requirement to issue such advertisement within two days is replaced with two "working days". This has now been reflected in the SEBI ICDR Regulations. Additionally, the requirement to make the DRHP public for comments for at least 21 days from DRHP filing has now been amended and made applicable from the date of the public announcement. Guidance could also be taken from the above-mentioned AIBI advisory.

Pre-issue and price band advertisements

Issuers that do not disclose the floor price or the price band in the RHP are required to issue a price band advertisement in the same newspapers in which the pre-issue advertisement was published. The Expert Committee noted that the price band advertisement involved duplication of disclosures of information with the pre-issue advertisement. Further, the price band advertisement disclosure requirements were extensive and covered multiple pages.

Accordingly, the existing price band advertisement and the pre-issue advertisement have now been combined. Issuers will be required to issue the pre-issue and price band advertisement two working days before the opening of the issue.

In order to avoid repetition, a cross-reference to the relevant sections of the RHP would be included in the advertisement rather than reproducing the disclosures. Additionally, certain information will be replaced with a quick response (**QR**) code, for instance the disclosures in relation to the "Basis for the Offer Price", that directs a reader to the website of the lead managers. The "Basis for the Offer Price" section should be separately uploaded on the website of the lead managers and updated for the price band.

As discussed above, these amendments reflect suggestions and recommendations of the Expert Committee, as well as, relevant stakeholders. The full impact of these amendments will be clearer as these are applied in ongoing and future transactions.

Key contacts

Yash J Ashar
Senior Partner
yash.ashar@cyrilshroff.com

Manan Lahoty
Partner (Head - Capital Markets)
manan.lahoty@cyrilshroff.com

Kranti Mohan
Partner (Head - REITs and InvITs)
kranti.mohan@cyrilshroff.com

Gokul Rajan
Partner (Regional Co-head Markets Practice (North))
gokul.rajan@cyrilshroff.com

Vishal Yaduvanshi
Partner (Regional Co-head Markets Practice (North))
vishal.yaduvanshi@cyrilshroff.com

Reuben Chacko
Partner (Regional Co-head Markets Practice (South))
reuben.chacko@cyrilshroff.com

Manshoor Nazki
Partner (Regional Co-head Markets Practice (South))
manshoor.nazki@cyrilshroff.com

Ravi Dubey
Partner (Regional Co-head Markets Practice (West))
ravi.dubey@cyrilshroff.com

Devaki Mankad
Partner (Regional Co-head Markets Practice (West))
devaki.mankad@cyrilshroff.com

Aashima Johur
Partner
aashima.johur@cyrilshroff.com

Abhiroop Lahiri
Partner
abhiroop.lahiri@cyrilshroff.com

Abhyuday Bhotika
Partner
abhyuday.bhotika@cyrilshroff.com

Anshul Roy
Partner
anshul.roy@cyrilshroff.com

Gayathri Ramachandran
Partner
gayathri.ramachandran@cyrilshroff.com

Janhavi Manohar
Partner
janhavi.manohar@cyrilshroff.com

Priyadarshini Rao
Partner
priyadarshini.rao@cyrilshroff.com

Puneet Passi
Partner
puneet.passi@cyrilshroff.com

Disclaimer

All information given in this alert has been compiled from credible, reliable sources. Although reasonable care has been taken to ensure that the information contained in this alert is true and accurate, such information is provided 'as is', without any warranty, express or implied as to the accuracy or completeness of any such information.

Cyril Amarchand Mangaldas shall not be liable for any losses incurred by any person from any use of this publication or its contents. This alert does not constitute legal or any other form of advice from Cyril Amarchand Mangaldas.

Should you have any queries in relation to the alert or on other areas of law, please feel free to contact us on cam.publications@cyrilshroff.com

Cyril Amarchand Mangaldas
Advocates & Solicitors

100+ years of legacy | **1000** Lawyers | **Over 200** Partners

Peninsula Chambers, Peninsula Corporate Park, GK Marg, Lower Parel, Mumbai 400 013, India
T +91 22 6660 4455 **E** cam.mumbai@cyrilshroff.com **W** www.cyrilshroff.com
Presence also in Delhi-NCR | Bengaluru | Ahmedabad | Hyderabad | Chennai | GIFT City | Singapore | Abu Dhabi