

Winds of Change



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There's a way to do it better—find it.” - Thomas A. Edison

The resonance of this famous quote is evident in the constant perseverance of our capital markets regulator, SEBI, who has focused in channelizing substantial wisdom towards introducing new concepts and improving the extant regulatory framework to inculcate “best practices” – with objective of facilitating fund raising avenues to corporates by adopting global practices and at the same time strengthening and preserving the ethos of efficient regulatory framework to protect investor interests.

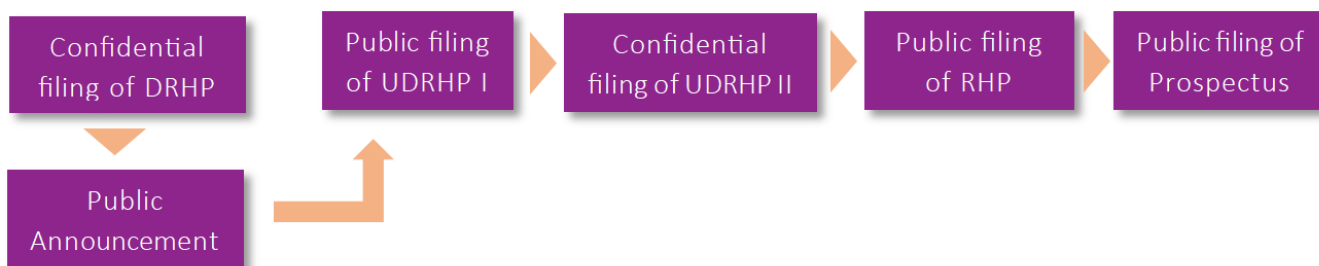
The thinking wheel at SEBI has been constantly been on the roll, and more progressively since recent times, which is evident from some key changes harnessed from this thought process, *inter alia*, introduction of changes in the ICDR Regulations with a view to increase transparency and streamlining processes, overhaul in some important concepts in REIT and InvIT products, changes in corporate governance framework with a view to empower shareholders, introduction of new concepts such as High Value Debt Listed Company, delisting of NCDs and proposing Environment, Social and Governance framework. To be earnest, one of most the recent innovation endeavour of reducing the post issue listing timeline from T+6 to T+3, to be implemented from later this year, would be a landmark overhaul in the capital markets journey of India so far.

Another important example of the progressive thought process of SEBI to dwell upon is the introduction of ‘Pre-filing of offer documents on confidential basis’. In the last few years, we have seen a surge in private and public issuers who are dominated with competitive landscape or dealing in sensitive products or services. Such issuers have pre-dominantly raised concerns of having certain sensitive information in public domain (considering the regulatory review process and marketing to be completed) without certainty of the launch of the issue. Considering the concerns gathered from such past issuances and analysing practices adopted in developed markets such as US, UK, Canada, Singapore and Hongkong, SEBI has extended an opportunity to such issuers an option to explore IPOs by filing the offer document with SEBI and stock exchanges in a confidential filing without making disclosure of sensitive information.

Current framework



Confidential Filing framework



Although it is a globally tested concept, the interesting trivia is the manner in which it is proposed to be implemented in Indian context. For instance,

- Though a formal framework has been put in place in India it is still optional for the issuers, which is akin to the approach followed in US, Canada and Hong Kong, on the contrary, the same is compulsory to be followed in Singapore and UK;
- From marketing perspective, roadshows allowed for QIB investors post confidential filing, and for remaining investors, roadshows can be conducted post public filing. This approach is similar to the approach followed in Singapore, whereas jurisdictions like UK, Canada and Hongkong permit roadshows only post public filing. In US it is principally post public filing - SEC had in 2019 extended the concept of ‘*Test-the-Waters*’ to all issuers in US – which was a tool only available for ‘Emerging Growth Companies’ till 2019. However, subject to certain caveats marketing can be done with certain institutional investors.
- Interestingly, the novel piece (not in any other jurisdiction) introduced by SEBI in the confidential filing process is

the requirement of making a public announcement by Issuers stating the fact (without providing any other details) that they have done a confidential filing with SEBI and Stock Exchanges.

It would be pre-mature to bucket the contours of the confidential framework into any pros and cons at this juncture. Given that it would be subjective *vis-a-vis* to respective issuer, it would be recommended that issuers consider the implications of the framework in their concerned case. Issuers can analyse, *inter alia*, on the following parameters:

- This framework may lead to formalizing the pre-consultation step with SEBI without divulging details to the public, including competitors;
- Competitive environment and need to maintain secrecy of information;
- The length of the marketing timelines envisaged for issue;
- Flexibility needed from capital structure perspective to complete certain corporate actions, such as conversion of convertible securities and eligibility for OFS – this would be put to test at the time of public filing of UDRHP 1;
- Timing of research report as in this it can be released only prior to public filing of DRHP;
- There is difference in timelines and costs under confidential filing vis-à-vis current filing process. Hence, the steps to be analysed considering the overall timelines and costs; and
- Obligations of the issuer under both processes. For instance, under confidential filing a separate log to be maintained of QIBs with whom interaction has been done,

We have recently seen the two filings being done under the confidential filing framework. While the concerned issuers are yet to be listed, various stakeholders would be able to deep dive into the nuances of undertaking this new process over a period of time. Having said that, it would definitely help certain issuers to introspect and take an informed decision for going ahead with the IPO, in the event any of the SEBI observations on the confidential filing pose a challenge to be implemented considering that it may entail making some fundamental alterations.

Given the optimistic outlook of the Indian economy in years to come and the favorable geo-political winds, we are looking forward to increasing fund raising opportunities from our Indian companies and many Indian arms of foreign multinational companies in the years to come. The focus of our Indian capital market regulator i.e. SEBI, to ensure strong corporate governance standards and at the same time adopting global best practices to ensure agility and transparency will surely go a long way in building and maintaining the confidence of domestic and global stakeholders in our markets.

With some necessary tweaks over time in the confidential filing process, we hope to adapt and cherish this another wind of change going forward.
