

## Practitioner's perspective

## A route worth considering

Videocon d2h's recent listing on the Nasdaq provides useful lessons. Ashok Lalwani and Kyle Pilkington explain

In December 2014, a new scheme became effective allowing unlisted Indian companies to list depository receipts on offshore exchanges in certain specified jurisdictions without a prior or simultaneous listing on a domestic stock exchange. The prior listing requirement was removed primarily so as to increase sources of liquidity for companies in the face of a perceived weak domestic capital market.

### Few takers

Despite the setup of the depository receipts scheme, few Indian companies considering an IPO have jumped at the opportunity to list overseas. While listing overseas has advantages, such as providing access to markets with deeper liquidity, lower cost of equity capital and a broader investor base, Indian companies looking to list have still overwhelmingly chosen domestic exchanges. There are a few reasons for this. Sentiment in the domestic capital markets has improved considerably since 2013, making offshore options less of a necessity. Furthermore, there has been uncertainty with respect to treatment of companies, and investors in companies, that are listed outside India. For example, there have been questions with respect to the tax treatment of holders of securities listed overseas.

### Innovative structuring

Despite these perceived uncertainties, Videocon d2h, a previously unlisted direct-to-home television services provider, recently used the depository receipts scheme to successfully list in the US on the Nasdaq, through an innovative structure.

Silver Eagle Acquisition, a special purpose acquisition company (SPAC) listed on the Nasdaq led by renowned media executives Harry Sloan and Jeff Sagansky, identified Videocon d2h as an investment target and signed

an agreement to purchase around 30% of the company. The transaction involved listing Videocon d2h's American depository shares (ADSs) on the Nasdaq and distributing them to Silver Eagle's shareholders and warrant holders who approved of the transaction. Silver Eagle was dissolved after the transaction, with non-approving shareholders being paid out in cash.

To list the ADSs on the Nasdaq, Videocon d2h had to first register its equity shares with the US Securities and Exchange Commission (SEC). While most foreign issuers listing in the US would register with the SEC using form F-1, which is the typical registration statement for US IPOs, given the nature of the transaction Videocon d2h was able to register its shares on form F-4, which is the form for business combinations and exchange offers.

The form F-4 served both as a proxy statement for Silver Eagle to obtain the approval of its existing holders, as well as a disclosure document for Videocon d2h. After receiving the SEC's approval following a review and comment process, Videocon d2h was successfully listed on the Nasdaq in April. This made Videocon d2h the first private sector media company in India to list overseas since 2000.

### Listing to be emulated?

It remains to be seen if the success of the Videocon d2h listing leads to more interest in US listings undertaken through investment by an already-listed SPAC. While the level of disclosure in the prospectus for such a transaction is generally required to be of the same standard as in an independently pursued IPO, there are certain advantages to the SPAC structure. For example, rather than having to undertake a potentially lengthy and arduous book building process, the offer in the Videocon d2h was only made to existing holders of Silver Eagle

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shares and warrants, thus allowing for a streamlined investor education process. As Silver Eagle and its financial adviser were familiar with Silver Eagle's investor base, it was relatively easy to identify what type of information investors would find meaningful, thus obviating the need to provide additional superfluous information for marketing purposes, and allowing the transaction to be completed swiftly. However, the availability of the SPAC option will depend upon linking up a SPAC with a suitable company to invest in, since SPACs are typically formed with a specific purpose in mind.

Videocon d2h's experience shows that listing offshore, including in the US, is a realistic option for unlisted domestic issuers. While an offshore listing may not be ideal for all companies considering an IPO, the option is certainly worth considering. This is particularly true for companies in industries which have strong ties to specific offshore exchanges where investors may have greater understanding of the sector. The Nasdaq, where large numbers of IT and technology companies are listed, was clearly a good fit for Videocon d2h.

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