

Listing of equity shares by public companies on international exchanges

The Ministry of Corporate Affairs ("MCA"), through its notification dated October 30, 2023, brought about an amendment to Section 23 of the Companies Act, 2013 ("**Companies Act**")¹. This amendment outlined in Section 5 of the Companies (Amendment) Act, 2023 allows public companies to issue a specific class of securities for the purposes of listing on permitted stock exchanges in permissible jurisdiction. However, there were no defined framework/regulations for listing such securities on permitted stock exchanges. On January 24, 2024, MCA and the Ministry of Finance, notified the Companies (Listing of equity shares in permissible jurisdictions) Rules 2024 ("**Listing of Equity Shares in Permissible Jurisdictions Rules**") and amended the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 ("**Amendment Rules**") respectively.

Norms for listing equity shares in the permissible jurisdictions

1. The Listing of Equity Shares in Permissible Jurisdictions Rules:

- a) identify the International Financial Services Centre in India (GIFT City) as the permissible jurisdiction, and NSE International Exchange (NSEIX) and India International Exchange (India INX) as the permitted stock exchanges.
- b) specify that the following companies are not eligible for issuing its equity shares for listing in permissible jurisdictions:
 - i) it has been registered under Section 8 or declared as Nidhi under Section 406 of the Companies Act;
 - ii) it is a company limited by guarantee and also having share capital;
 - iii) it has any outstanding deposits accepted from the public as per Chapter V of the Companies Act and rules made thereunder;
 - iv) it has a negative net worth;
 - v) it has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holder or any other secured creditor, which has not been made good, and if made good a period of 2 (two) years has not lapsed since the date of making good the default;
 - vi) it has made any application for winding-up under the Companies Act or for resolution or winding-up

¹ Section 23 of the Companies Act, 2013 – "... (3) Such class of public companies may issue such class of securities for the purposes of listing on permitted stock exchanges in permissible foreign jurisdictions or such other jurisdictions, as may be prescribed.

(4) The Central Government may, by notification, exempt any class or classes of public companies referred to in sub-section (3) from any of the provisions of this Chapter, Chapter IV, section 89, section 90 or section 127 and a copy of every such notification shall, as soon as may be after it is issued, be laid before both Houses of Parliament."

under the Insolvency and Bankruptcy Code, 2016 and in case any proceedings against the company for winding-up or for resolution or winding-up is pending;

- vii) it has defaulted in filing of an annual return under Section 92 or financial statement under Section 137 of the Companies Act;
- viii) these Amendment Rules apply to unlisted public companies and listed public companies, provided they adhere to regulations framed by the Securities and Exchange Board of India or the International Financial Services Centres Authority and the requirement of unlisted public companies are required to file the prospectus in e-Form LEAP-1 within 7 (seven) days after finalization, along with the specified fees, and ensure compliance with Indian Accounting Standards while preparing accounting statements.

2. The Amendment Rules brought about the following changes:

- a) New definitions such as ‘international exchange’², ‘listed Indian company’³, ‘permissible holder’⁴ and ‘permissible jurisdiction’⁵ are introduced;
- b) Permissible holders as defined under Schedule XI, have been allowed to invest in equity shares of Indian companies listed or to be listed on an international exchange under the ‘Direct Listing of Equity Shares of Companies Incorporated in India on International Exchanges Scheme’, as outlined in Schedule XI of the Amendment Rules.
- c) Schedule XI specify conditions for the issue and listing of equity shares for public Indian companies, subject to compliance with prohibited activities, sectoral caps, and other prescribed rules. It emphasizes that equity shares issued on an international exchange must be in dematerialized form and rank *pari passu* with those listed on recognized stock exchanges in India. It also outlines specific laws that must be complied with for issuing or offering equity shares on international exchanges.
- d) Eligibility criteria for public listed companies, existing shareholders, listed companies, and public unlisted companies looking to issue or offer equity shares on international exchanges.
- e) The Indian companies having its equity shares listed on the international exchange must ensure voting rights are exercised by permissible holders or through their custodian following instructions from such permissible holder.
- f) The listed companies issuing equity shares or exiting shareholder offering equity shares on a recognized stock exchange in India, should be issued at a price not less than the price applicable to a corresponding mode of issuance of equity shares to domestic investors under the applicable laws. However, in case of initial listing of equity shares on the international exchange, the issue price or price for transfer of equity shares should be determined by a book-building mechanism as may be permitted by the international exchange and should not be less than the fair market value under the applicable rules and regulation under the Foreign Exchange

² International exchange means the permitted stock exchange in permissible jurisdictions which are listed at Schedule XI annexed to the Amendment Rules.

³ Listed Indian company means an Indian company which has any of its equity instruments or debt instruments listed on a recognised stock exchange in India and on an International Exchange and the expression “unlisted Indian company” will be construed accordingly.

⁴ permissible holder means (a) a holder of equity shares of the Company which are listed on International Exchange, including its beneficial owner:

Provided that such a holder who is a citizen of a country which shares land border with India, or an entity incorporated in such a country, or an entity whose beneficial owner is from such a country, shall hold equity shares of such public Indian company only with the approval of the Central Government.

Explanation 1.- For the purposes of this clause, permissible holder is not a person resident in India.

Explanation 2.- The permissible holder, including its beneficial owner, shall be responsible for ensuring compliance with this requirement. The public Indian company, in its offer document, by whatever name called in the permissible jurisdiction, shall make a disclosure to this effect.

(b) a permissible holder may purchase or sell equity shares of an Indian company listed on an international exchange subject to limit specified for foreign portfolio investment under these rules.

⁵ Permissible jurisdiction means such jurisdiction as notified by the Central Government under sub-clause (f) of sub-rule (3) of rule 9 of Prevention of Money-laundering (Maintenance of Records) Rules, 2005

Management Act, 1999.

This recent regulatory framework from the MCA clears the path for unlisted public companies to explore the option of direct listing at GIFT City. However, SEBI is yet to provide further regulations for listed companies, it is evident that MCA's rules place a strong emphasis on defining eligibility criteria, with certain disqualifications, signaling a crucial distinction for companies eyeing international market access.

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