



SEBI proposes norms for direct listing of equity shares within and outside India

22 December 2018

First Notes on

Financial reporting

Corporate law updates

Regulatory and other information

Disclosures

Sector

All

Banking and insurance

Information, communication, entertainment

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Relevant to

All

Audit committee

CFO

Others

Transition

Immediately

Within the next three months

Post three months but within six months

Post six months

Forthcoming requirement

Introduction

Currently, companies incorporated in India (Indian companies) can access the equity capital markets outside India following Global Depository Receipts (GDRs)/American Depository Receipts (ADRs) framework. Further, they can list their debt securities on foreign stock exchanges only through the masala bonds and/or through Foreign Currency Convertible Bonds (FCCBs)/Foreign Currency Exchangeable Bonds (FCEBs) framework. On the other hand, companies incorporated outside India (foreign companies) can access the Indian capital markets only through the Indian Depository Receipts (IDRs) framework.

On 12 June 2018, the Securities and Exchange Board of India (SEBI) formed an 'Expert committee for listing of equity shares of companies incorporated in India on foreign stock exchanges and of companies incorporated outside India on Indian stock exchanges' (the committee). The role of the committee, *inter alia*, was to make recommendations for a suitable framework to facilitate direct listing of equity shares of Indian companies on foreign stock exchanges and of foreign companies on Indian stock exchanges.

Accordingly, on 4 December 2018, SEBI released the report of the committee with a proposed framework for such direct listing.

This issue of First Notes aims to provide an overview of key recommendations made by the committee with respect to direct listing of equity shares in Indian and foreign stock exchanges.

The recommendations in the report can be summarised under the following heads:



Listing of equity shares of Indian companies on foreign stock exchanges



Listing of equity shares of foreign companies on Indian stock exchanges

Overview of the amendments

Listing of equity shares of Indian companies on foreign stock exchanges - Proposals

- **Eligibility for listing:** As per the recommendations, equity shares of Indian companies would be allowed to be listed only on specified stock exchanges in permissible jurisdictions outside India. The report provides a detailed criteria for identification of a permissible jurisdiction.

Based on the criteria, the committee identified following permissible jurisdictions with corresponding stock exchanges where Indian companies could get their equity shares listed:

| Permissible jurisdictions | Specified stock exchanges |
|--------------------------------|--|
| United States of America (USA) | NASDAQ, The New York Stock Exchange (NYSE) |
| China | Shanghai Stock Exchange, Shenzhen Stock Exchange |
| Japan | Tokyo Stock Exchange, Osaka Securities Exchange |
| South Korea | Korea Exchange Inc. |
| United Kingdom (U.K.) | London Stock Exchange |
| Hong Kong | Hong Kong Stock Exchange |
| France | Euronext Paris |
| Germany | Frankfurt Stock Exchange |
| Canada | Toronto Stock Exchange |
| Switzerland | SIX Swiss Exchange |

- **Amendments to the Companies Act, 2013:** Currently, Chapter III of the Companies Act, 2013 (2013 Act) prescribes the framework for public offers and private placements for Indian companies (including companies that issues ADRs/GDRs or propose to list their equity shares on foreign exchanges).

The committee recommended that the Ministry of Corporate Affairs (MCA) should issue following clarifications:

- Provisions of Chapter III of the 2013 Act would not be applicable to listing of equity shares of Indian companies on foreign stock exchanges.
- Provide clarity on maintenance of register of members (as required under Section 88 of the 2013 Act) in case of overseas listing.

- **Applicability of SEBI regulations:** The committee proposed the following with respect to applicability of SEBI regulations:

- Unlisted Indian companies:** Unlisted Indian companies that propose to list their equity shares on foreign stock exchanges would be governed by the listing framework of the concerned permissible jurisdictions. However, relevant Indian laws such as 2013 Act, etc. would continue to apply to such companies.
- Listed Indian companies:** Listed Indian companies that propose to list their equity shares on foreign stock exchanges would be required to comply with the rules/regulations/laws/initial and continuous listing/disclosure requirements prescribed by SEBI.

In case, there are variances in the compliance obligations or additional compliances are required in permissible jurisdictions, then such listed companies would have to provide a comparative analysis of the provisions that are applicable in India along with compliance of the same and the requirements applicable in the permissible jurisdictions.

- **Financial reporting framework:** The accounting standards of the country of listing have been proposed to be applicable to an Indian company with equity shares listed on a foreign stock exchange. However, such a company would be required to prepare its Consolidated Financial Statements (CFS) as per applicable Indian Accounting Standards (Ind AS) for statutory reporting purposes.
- **Others:** The committee has also proposed certain amendments to the Foreign Exchange Management Act, 1999 (FEMA Act) including Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017.

Listing of equity shares of foreign companies on Indian stock exchanges - Proposals

- **Eligibility for listing:** As per the recommendations, a foreign company would be eligible for listing its equity shares in India only if it has been incorporated in a permissible jurisdiction. The report provides a detailed criteria for identification of a permissible jurisdiction.

Based on the criteria, the committee identified the following countries as permissible jurisdictions:

- USA
- China
- Japan
- South Korea
- U.K.
- Hong Kong
- France
- Germany
- Canada
- Switzerland.

Accordingly, companies incorporated in any of the above mentioned jurisdictions would be eligible for listing their shares in India on the following stock exchanges:

- National Stock Exchange of India Limited (NSE Ltd.)
- The BSE Ltd.
- Metropolitan Stock Exchange of India Limited
- Stock Exchanges in GIFT-IFSC.

- **Amendment to the 2013 Act:** Currently, Section 390 of the 2013 Act authorises the Central Government (CG) to make rules in relation to the following:

- Offer of IDRs
- Requirement of disclosures in prospectus or letter of offer issued in connection with IDRs
- Manner in which the IDRs should be dealt within a depository mode and by custodian and underwriters
- Manner of sale, transfer, or transmission of IDRs.

The committee recommends that a provision similar to Section 390 should be introduced in the 2013 Act which would enable SEBI to make regulations permitting to listing of equity shares of companies incorporated outside India on Indian stock exchanges.

- **Amendments to SEBI regulations:** The committee recommended that SEBI (Issue of Capital and Disclosure Requirements) Regulations (ICDR Regulations) and SEBI (Listing Obligations and Disclosure Requirements) Regulations (Listing Regulations) should be amended to provide a framework which would enable listing of equity shares of companies incorporated outside India on Indian stock exchanges. Accordingly, it recommended following key areas of the framework:

- Company specific eligibility criteria:* The company specific criteria should be guided by the investor protection consideration. It should clearly specify that fraudulent or debarred companies would not be allowed to access the Indian capital markets.
- Removal of requirement of identifying 'promoter(s)/promoter group':* The requirement of the ICDR Regulations relating to identification of 'promoter(s)/promoter group' should not be made applicable to a foreign company listing on an Indian stock exchange.

However, in case such a company has identified controlling or significant shareholders under the law of its incorporation, then it would be required to disclose related material information such as material litigation relating to such controlling or significant shareholders, etc.

- Issue size and minimum float:* The committee proposed that minimum 10 per cent of the paid-up of the foreign company should be listed on the Indian stock exchanges. Further, such a company should have an issue size of INR1,000 crore and allotment should be made to at least 200 investors.
- Applicability of IDR requirements:* The requirements relating to issue of IDRs in the Listing Regulations should be made applicable, *mutatis mutandis*, to listing of equity shares on Indian stock exchanges by listed foreign companies.

Further, unlisted foreign companies should ensure compliance with the continuous listing framework (with proposed amendments) applicable in India for listing on Indian stock exchanges.

- e) *Financial reporting framework:* Foreign companies listing on Indian stock exchanges would be required to prepare and disclose their CFS¹ (in English) following any of the following accounting standards:
- i. Ind AS
 - ii. International Financial Reporting Standards (IFRS)²
 - iii. US Generally Accepted Accounting Principles (US GAAP)
 - iv. Local GAAP of the country of incorporation.
- Other aspects to consider are as follows:
- **In case CFS has been prepared as per IFRS/US GAAP:** A summary of significant differences between IFRS/US GAAP and Ind AS (with no quantitative reconciliation) along with the CFS would be required.
 - **In case CFS has been prepared as per local GAAP of the country of incorporation:** A quantitative reconciliation statement between the local GAAP of the country of incorporation and Ind AS for the periods presented would be required. Additionally, a summary of significant differences between the local GAAP and Ind AS would be presented.
- f) *Mandatory e-voting for shareholders' resolutions:* Currently, Regulation 44 of the Listing Regulations mandatorily requires every equity listed entity to provide a remote e-voting facility to its shareholders in respect of all shareholders' resolutions. The committee, accordingly, proposed that the e-voting requirement should be made applicable to the foreign companies listing on Indian stock exchanges.
- **Others:** The committee has proposed amendments to certain other statutes. These are as follows:
 - a) Foreign Exchange Management (Transfer or Issue of any Foreign Security)
 - b) Foreign Exchange Management (Deposit) Regulations, 2016
 - c) Other SEBI regulations such as SEBI (Prohibition of Insider Trading) Regulations, 2015; SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011; SEBI (Buy-Back of Securities) Regulations, 2018 and SEBI (Delisting of Equity Shares) Regulations, 2009.

The committee proposed that above amendments should be made to the Listing Regulations.

Our comments

The proposed framework is a welcome step as it is expected to help Indian companies to list their equity shares directly outside India and help foreign companies to list in India. This would cater to the capital requirements of corporates at optimal cost of capital which in turn would add to the objective of ease of doing business in India.

In the initial stage, it is proposed that companies would be permitted to list only in specified stock exchanges outside India. Similarly, companies incorporated within permissible jurisdictions outside India have been allowed to list their equity shares in India under the proposed framework. Certain other points of the framework to be considered are as follows:

- **Preparation of CFS:** The framework suggested the following with respect to preparation and presentation of financial results by a company in the respective cases:

Indian companies listing on foreign stock exchanges

In such a case, the relevant accounting standards of the country of listing would be applicable to the Indian companies which may require preparation/presentation of CFS either in accordance with accounting/auditing standards applicable to domestic companies in such jurisdiction or comparable global standards.

However, for statutory reporting purposes, such Indian companies would be required to prepare its CFS as per the applicable Ind AS.

¹CFS would include the balance sheet, statement of profit and loss, cash flow statement, statement of changes in equity and related notes to the financial statements.

For the purpose of translating the CFS (recent fiscal year and interim) into Indian Rupee (INR), the exchange rate applicable as on the date of the most recent balance sheet should be considered.

²Issued by the International Accounting Standards Board (IASB).

Our comments (cont.)

Foreign companies listing on Indian stock exchanges

Foreign companies listing on Indian stock exchanges would be required to prepare and disclose CFS (in English language) in accordance with one of the given financial reporting framework:

- a) Ind AS
- b) IFRS
- c) US GAAP or
- d) Local GAAP of country of incorporation.

Accordingly, if CFS has been prepared in accordance with IFRS or US GAAP, the foreign company would be required to annex a summary of significant differences between IFRS/US GAAP and Ind AS (with no quantification).

If the foreign company opts to prepare and disclose the CFS as per country of incorporation's local GAAP, then it would have to present a quantitative reconciliation statement between country of incorporation's local GAAP and Ind AS for the periods presented. Additionally, a summary of significant differences between the country of incorporation's local GAAP and Ind AS would be required.

- **Minimum float for listing:** The proposed framework requires that at least 10 per cent of the paid-up capital of the foreign company should be listed on Indian stock exchange(s). Also, the issue size of a foreign company (for listing in India) should be at least INR1,000 crore with allotment to at least 200 investors. This is expected to ensure liquidity at all times in the Indian capital market.
- **No identification of promoter(s)/promoter group required:** The committee proposed that the norms relating to identification of promoter(s)/promoter group would not be applicable to a foreign company listing on Indian stock exchange(s).

However, in case the foreign company has identified controlling or significant shareholders under the law of its country of incorporation, certain material information would be required to be disclosed regarding controlling or significant shareholders such as, material litigation relating to such controlling or significant shareholders.

The framework in the present form does not provide whether other norms relating to promoter(s)/promoter group encompassed under the SEBI ICDR Regulations would be applicable to such foreign companies such as minimum promoters' contribution, lock-in and restrictions on transferability and pledge of securities held by promoters. Further, clarity regarding the same would be required from SEBI along with the final regulations.

- **Norms relating to prospectus and private placement not applicable:** The committee in its report has proposed to request MCA to issue a clarification to the fact that provisions of Chapter III of the 2013 Act (i.e. prospectus, allotment of securities and private placement) would not apply to listing of equity shares by an Indian company on foreign stock exchange(s). This would imply that the currently prevalent routes for raising capital such as private placement and public offer would not be available to such Indian companies.

The bottom line

The proposed framework is expected to increase infusion of foreign capital in India and would broaden the capital base and investor size of the equity listed companies in India. Listed companies are encouraged to provide their comments based on their practical experiences gained while listing their shares out of India so as to make the final regulations most beneficial to all.



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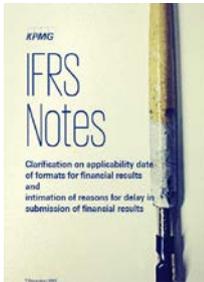
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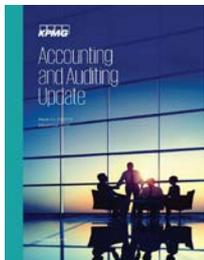
Clarification on applicability date of formats for financial results and intimation of reasons for delay in submission of financial results

7 December 2018

Schedule III to the Companies Act, 2013 (2013 Act) provides general instructions for presentation of financial statements of a company under both Accounting Standards (AS) and Indian Accounting Standards (Ind AS).

This issue of IFRS Notes provides insights on clarification issued by the National Stock Exchange of India Limited (NSE) and the BSE Limited (BSE) regarding applicability date of the notification on amendments to Schedule III (issued on 11 October 2018). Additionally, the IFRS Notes highlights SEBI's requirement regarding intimation of reasons for delay in submission of financial results.

Missed an issue of Accounting and Auditing Update or First Notes



Issue no. 29 – December 2018

The topics covered in this issue are:

- Key Audit Matters
- Ind AS 115: Impact on transport, logistics and leisure sector
- Classification of financial instruments with prepayment features
- Regulatory updates.



SEBI issues amendments to the Listing Regulations - reclassification of promoters and additional disclosure in an annual report

20 December 2018

On 16 November 2018, SEBI issued amendments to the Listing Regulations which, inter alia, provide revised norms relating to reclassification of promoters/public and additional disclosure in an annual report.

The amendments are effective from 16 November 2018.

This issue of First Notes aims to provide an overview of the amendments made by SEBI to the Listing Regulations.



Voices on Reporting

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In a session scheduled to be held on 7 January 2019, we will discuss key financial reporting and regulatory matters that are expected to be relevant for stakeholders for the quarter ending 31 December 2018.

For registration details, please click [here](#).

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