

Challenges in Listing Abroad for Indian Corporates



Vishal Kampani
Managing Director & CEO
JM Financial Ltd.

The post-liberalization era has ushered in a wave of economic reform which has catapulted India to amongst the top economic powers in the world. This has also led to the birth of large conglomerates, which have set their footprints across global markets. While Indian capital markets are strong and vibrant, Indian companies must also find it easier

to access a much larger pool of investors in global markets. Traditional wisdom has long held that companies cross-listing their shares on global exchanges can access more sophisticated investors, benefit from greater liquidity, enhance their profile, access a global pool of human resources and inculcate global standards of corporate governance. Further, Indian companies in specific sectors such as technology and telecom could benefit from having access to investors with sector expertise and established listed peers that could help the companies derive comparatively higher valuations, as opposed to the home country.

Companies listed in India are currently permitted to access the overseas equity markets only through the issuance of American Depository Receipts (ADRs) and Global Depository Receipts (GDRs), and foreign debt markets through masala bonds, foreign currency convertible bond (FCCBs) and foreign currency exchangeable bonds (FCEBs). Indian companies seeking to list exclusively abroad tend to use offshore routes to list on overseas exchanges like NASDAQ and NYSE by listing parent firms in tax friendly jurisdictions. This of course requires time to structure, and sometimes the listings suffer from discounts as the operating company isn't the one being listed.

A first step has been taken by Indian regulators towards expanding the capital-raising avenues available to Indian companies by laying the foundation of formulating a legal framework for direct listing of equity shares of Indian companies on foreign stock exchanges. A report published by an expert committee constituted by the Securities and Exchange Board of India (SEBI) in December, 2018 set out a blueprint for the framework and legal changes necessary for making overseas listing of Indian companies a reality. This was followed by the Union Cabinet approving a proposal to amend the

Companies Act, 2013 in March, 2020 allowing listing of Indian companies on stock exchanges in foreign jurisdictions. The framework for enabling such listings under the foreign exchange and securities laws are under review by various regulators.

While it may be preliminary to guess the envisaged regulatory framework, there are some structural considerations laid down below which would contribute to the seamless implementation of the proposed framework:

- **Permissible Jurisdictions:** As a measure to avoid illegal transactions such as round tripping of illegal funds and money laundering, it is only fair that jurisdictions with strong regulatory oversight be identified for Indian companies to seek listing. The SEBI Expert Committee had suggested 10 permissible jurisdictions including US, China, Japan, United Kingdom, Hong Kong, South Korea among others. The principle for identifying such jurisdictions are similar to the criteria for determining jurisdictions where listing of masala bonds under the relevant Reserve Bank of India (RBI) circular can take place and includes countries that are members of International Organisation of Securities Commissions (IOSCO) and Financial Action Task Force.
- **Amendments to several primary statutes:** Implementation of overseas listing regime would require, amongst other things, amendment/clarification to several primary statutes such as Foreign Exchange Management Act and Rules, Companies Act, 2013, Income Tax Act etc. More importantly, the FEMA regulations need to be tweaked to allow issuance of shares to persons resident outside India, and receipt and retention of amounts received in foreign currency accounts overseas. Furthermore tax laws, both relating to capital gains arising on transfer of equity shares and also the rules relating to valuation of shares, require necessary amendments and clarifications
- **Compliance with multiple laws:** Entities listed in India also seeking listing overseas will be required to ensure compliance with both SEBI prescribed regulations and those of the foreign jurisdiction where they list. Earlier, even the GAAPs were different, but the convergence of Indian companies to IFRS is definitely a move in the right direction. Nevertheless compliance with cross-jurisdictional laws can get complex and onerous for issuers and may require co-ordination between Indian and foreign requirements. There may also be situations where conflict may arise between the two sets of laws. It would be essential to evolve a mechanism to

resolve such situations which may require swift regulatory action. Forums like IOSCO could be invaluable in mediating and evolving such mechanisms. Also, an overseas listing will substantially increase the cost of compliances and listing, which is a key criteria to be considered before contemplating such a move

- **Eligibility requirements:** The opportunity to list abroad lacks lustre for mid and small cap Indian companies. Due to limited knowledge of such companies, it would be difficult to attract investors abroad, while the costs of listing and compliance can be prohibitive for such companies. Meanwhile in India, due to familiarity, it becomes easier for such companies to get demand from different buckets of investors. Therefore, eligibility requirements for listing abroad, based on factors such as size and industry should be considered.
- **Broader investor base locally:** While a typical listing in India allows participation from FPIs, DIIs as well as non-institutional investors, listing overseas will restrict the pool of demand to only FPIs. This structural difference becomes a cause of concern since HNI and Retail investors typically

contribute to a significant portion of the demand book. Also, there is no clarity whether Indian residents can also participate in the overseas listing under the current structure. Having said that, Indian Capital Markets have evolved substantially, post 1991 and have managed to attract almost all large and relevant global financial institutions that are, today, registered in India. An Indian company should consider listing in home markets, since they have a sense of affiliation, rather than listing overseas only, in markets such as London, Singapore, Luxembourg etc.

The SEBI Expert Committee Report and amendment to the Companies Act has laid the foundation for implementing a framework for overseas listing. However, this is a first step and there remain a number of challenges that need to be addressed. We, as industry participants, must follow through on the foundation already laid and kick start a debate with various regulators to streamline operational parameters among securities regulators, stock exchanges and capital market intermediaries in India and outside jurisdictions, to make overseas listing smooth and seamless.
