

Regulatory Hotline

June 16, 2014

OFFSHORE LISTING REGIME: HOW TO RAISE FUNDS AND MONETIZE INVESTMENTS

Government's recent initiative to allow unlisted companies to list on offshore markets through the depository receipt (DR) mechanism without the requirement of simultaneous listing in India is likely to be a major shot in the arm for many sectors, and also offer exits to private equity players looking to monetize their investments. Though offshore listing was permitted later last year by Ministry of Finance, such listings could not happen as SEBI had not prescribed the disclosures for such listings.

Government has only recently prescribed that SEBI shall not mandate any disclosures, unless the company lists in India. Once the air around disclosures to SEBI has been cleared, we can expect offshore listing of DRs to grow on the back of the reasons set out below.

First, offshore listing will offer the opportunity to a slew of young Indian companies to tap the overseas markets, which unlike domestic markets remain quite vibrant. 2012 saw only 3 mainboard listings as against 256 in the US.

Second, offshore listing would allow Indian entrepreneurs the platform to tap investors that have a much better understanding of the value proposition of the business. For instance, innovative tech, biotech, internet services are likely to receive a better valuation on NYSE / NASDAQ as against domestic markets.

Today, markets have become associated with sectors - NYSE / NASDAQ is known for tech, SGX for real estate and infra, LSE/AIM for infra and manufacturing. DR's would allow the opportunity to list on exchanges that are most conducive to the sector.

Third, foreign investors will find it more amenable to invest in DR's denominated in foreign currency as against INR, which has depreciated by more than 50% since 2007. Hedging cost is likely to be an important driver for the growth of DRs. Many private equity players suffered the wrath of their LPs due to the steep rupee depreciation, despite the company outperforming the expectations.

Fourth, while the offshore listing regime is meant for fund-raising (it requires that funds must be brought back into India within 15 days unless utilized offshore for operations abroad), with a little bit of structuring, the proceeds can also be used to provide tax free exits to offshore private equity players.

Since there is no end use prohibition, proceeds of the DR can be structured to retire existing debt or private equity. With a growing number of secondary direct funds looking at India, DRs can be the preferred way to invest in India, retire existing investors and monetize the investment later on the floor of the exchange.

Fifth, from a tax perspective, investors can finally breathe easy. There will be no tax on the sale of DRs on the stock exchange. Hence, investors need not worry about GAAR and substance in the treaty jurisdiction or risk of indirect transfer taxation.

Sixth, listing of DRs is likely to be much cheaper than listing of shares on foreign exchanges and sometimes the compliance costs of ADR / GDR may be lower than the compliance costs of domestic listing.

Seventh, offshore listing would give depth to Indian capital markets as well, and brighten the chances of the company going public in India after having a successful show on the offshore markets.

Eighth, listing on offshore exchanges like NYSE / NASDAQ / SGX has its own snob value and is likely to benefit many of the younger companies in gaining reputation and recognition overseas.

Ninth, an increasing number of acquisitions, especially in the tech space are happening by way of swaps, or in other words, the shareholders of the target company receiving consideration in form of shares of the acquirer company.

This is a common strategy to keep the interests of both the parties aligned post acquisition. With most targets for tech companies being offshore, such swap deals are hard to achieve, as there may be few takers for Indian unlisted shares. To that extent, DRs being dollar denominated can be used as currency for acquisitions.

However, notwithstanding the enormous benefits that the offshore listing regime brings, its success remains circumspect as the scheme has only been allowed for 2 years on a pilot basis. The specter of what will happen after 2 years (6 months of which have already elapsed) and the fear of the government requiring simultaneous listing in India (as was done in 2004) is likely to keep many issuers away. Having said that, offshore listing regime unveils a huge opportunity for fund raising, particularly for young IT / ITES, biotech companies etc. which do not feature on the list of either private equity or banks. What remains to be seen is the if the Government allows for DRs with underlying debt instrument as against equity.

This article was published in The Economic Times dated June 10, 2014. The same can be accessed from the [link](#).

Research Papers

Littler International Guide (India) 2024

November 08, 2024

Unmasking Deepfakes

October 25, 2024

Are we ready for Designer Babies

October 24, 2024

Research Articles

The Bitcoin Effect

November 14, 2024

Acquirers Beware: Indian Merger Control Regime Revamped!

September 15, 2024

Navigating the Boom: Rise of M&A in Healthcare

August 23, 2024

Audio

Digital Lending - Part 1 - What's New with NBFC P2Ps

November 19, 2024

Renewable Roadmap: Budget 2024 and Beyond - Part I

August 26, 2024

Renewable Roadmap: Budget 2024 and Beyond - Part II

August 26, 2024

NDA Connect

Connect with us at events, conferences and seminars.

NDA Hotline

[Click here to view Hotline archives.](#)

Video

"Investment return is not enough" Nishith Desai with Nikunj Dalmia (ET Now) at FI8 event in Riyadh

October 31, 2024

Analysing SEBI's Consultation Paper on Simplification of registration for FPIs

September 26, 2024

– Ruchir Sinha & Nishchal Joshipura
You can direct your queries or comments to the authors

DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does not substitute the need to refer to the original pronouncements.

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In case this mail doesn't concern you, please unsubscribe from mailing list.

Scope of judicial interference and inquiry in an application for appointment of arbitrator under the (Indian) Arbitration and Conciliation Act, 1996

September 22, 2024