



Tax alert: Direct listing of shares by Indian public companies permitted on International Exchanges in GIFT-IFSC

31 January 2024

The Ministry of Corporate Affairs (MCA), on 30 October 2023, had notified section 5 of the Companies (Amendment) Act 2020, amending section 23 of the Companies Act 2013, which allowed certain class of Indian public companies to list their securities on permitted foreign stock exchanges. However, a detailed framework / rules for operationalization of the said provision was awaited.

MCA and the Ministry of Finance has now, *vide* notifications dated 24 January 2024, notified Companies (Listing of equity shares in permissible jurisdictions) Rules 2024 and amended the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 ("FEMA Non-Debt Rules 2019") respectively, thereby paving the way for Indian public companies to list their equity shares on permissible international stock exchanges in Gujarat International Finance Tec-City - International Financial Services Centre in India ("GIFT-IFSC").

In a nutshell



FEMA Non-Debt Rules 2019 is amended to introduce provisions permitting direct listing of equity shares of Indian public companies on international exchanges operating in GIFT-IFSC.

MCA has notified rules for the eligibility criteria and the requirements for listing of equity shares.



Indian public listed or unlisted companies are only permitted for direct listing under this Scheme.

If permissible holder of equity shares is not a person resident in India, such holding shall be regarded as foreign holdings of the Indian public company.



Permissible jurisdiction for overseas listing means GIFT-IFSC.

Permitted international exchanges implies the following exchanges in GIFT-IFSC:

- India International Exchange
- NSE International Exchange.



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Background:

- SEBI Report of the Expert Committee for listing of equity shares of companies incorporated in India, on foreign stock exchanges, and *vice versa*, dated 4 December 2018 (SEBI 2018 Report), proposed amendments to various laws in order to enable listing of equity shares of companies incorporated in India, on foreign stock exchanges.
- Companies (Amendment) Bill, 2020, *inter alia*, made specific provisions allowing prescribed class of public companies to list on prescribed stock exchanges in prescribed foreign jurisdictions. The same culminated in section 5 of Amendment Act 2020.
- The IFSCA (Issuance and Listing of Securities) Regulations, 2021 (“IFSCA ILS Regulations”) were notified on 16 July 2021. These regulations, *inter-alia*, provide the regulatory framework for listing of Indian and foreign companies, listing by SMEs and start-ups, listing of Special Purpose Acquisition Companies, listing of debt securities, listing of depository receipts etc.
- In July 2023, the Union Finance Minister announced the decision of the Government of India to permit direct listing of unlisted and listed Indian companies on the stock exchanges in IFSC. Pursuant to the announcement, a Working Group was constituted on “Direct Listing of Listed Indian Companies on IFSC Exchanges”, under the chairmanship of Shri Praveen Trivedi, Executive Director, IFSCA, and other members comprising from Ministry of Corporate Affairs, Department of Economic Affairs, Securities and Exchange Board of India and market participants.
- On 30 October 2023, the Ministry of Corporate Affairs (MCA) notified section 5 of the Companies (Amendment) Act 2020. Through section 5 of the Companies (Amendment) Act 2020, Section 23(3) was inserted into the Companies Act 2013, which allowed certain class of Indian public companies to list their securities on permitted foreign stock exchanges. However, a detailed framework / rules for operationalization of the said provision was awaited.
- The Working Group submitted its report on 20 December 2023, wherein it made several recommendations for amendments to various framework and regulations, including to the IFSCA ILS Regulations.
- MCA and the Ministry of Finance have now, vide notification dated 24 January 2024, notified Companies (Listing of equity shares in permissible jurisdictions) Rules, 2024 and amended the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 (“FEMA Non-Debt Rules 2019”) respectively, thereby paving the way for Indian public companies to list their equity shares on permissible international stock exchanges in GIFT-IFSC. SEBI is in the process of issuing the operational guidelines for the same.

Key Highlights:

- MCA has, *vide* Notification dated 24 January 2024, notified the Companies (Listing of equity shares in permissible jurisdictions) Rules 2024 (“Companies Overseas Listing Rules”), which lays down provisions for applicability, eligibility of Indian public companies and the requirement for overseas listing of equity shares.
- The Ministry of Finance amended the FEMA Non-Debt Rules 2019 by introducing Chapter X on ‘Investment by Permissible Holder in equity shares of public companies incorporated in India and listed on international exchanges’ and Schedule XI – direct listing of equity shares of companies incorporated in India on international exchanges scheme (“FEMA Direct Listing Scheme”), *vide* the FEMA (Non-debt Instruments) Amendment Rules, 2024 (“FEMA Non-Debt Rules 2024”) which permits Indian public companies to list their equity shares on international exchanges in IFSC Gift City, in India.
- The Companies Overseas Listing Rules, FEMA Direct Listing Scheme and IFSCA ILS Regulations, provide an overarching framework for issuing and listing of equity shares of Indian public companies on international stock exchanges in GIFT-IFSC. Presently, only stock exchanges in GIFT-IFSC have been designated as international stock exchanges.
- Following are key highlights of the Companies Overseas Listing Rules and FEMA direct listing scheme for overseas listing of equity shares by Indian public companies on international stock exchanges in GIFT-IFSC:

Sl. No.	Parameters	Key provisions of Rules
1	Eligible companies for listing of equity shares	<ul style="list-style-type: none"> — Unlisted public companies — Listed public companies (in accordance with SEBI regulations and IFSCA)
2	Permissible securities for listing	Equity Shares
3	Mode of issuance and listing	<ul style="list-style-type: none"> — New issue or offer for sale by existing shareholders — Issue and listing of equity shares shall be in dematerialized form ranking pari-passu with existing equity shares
4	Permissible Jurisdiction for listing of Equity Shares	GIFT-IFSC
5	Permissible International Exchanges	<ul style="list-style-type: none"> — India International Exchange — NSE International Exchange
6	Permissible holder / investors	<ul style="list-style-type: none"> — Person not resident in India under FEMA. — Individual / entities from land bordering countries can invest in equity shares traded on such exchanges, provided prior Government approval is obtained.
7	Restrictions on listing of equity shares	<p>The following public companies are not eligible for listing their equity shares:</p> <ul style="list-style-type: none"> — Section 8 / Nidhi Company registered under Companies Act 2013; — Company limited by guarantee and also having a share capital; — Company having negative net worth; — Company having outstanding deposits accepted from the public as per Chapter V of the Companies Act 2013 and rules made thereunder; — Such other conditions prescribed under Rule 3 of the FEMA Direct Listing Scheme and Rule 5 of the Companies Overseas Listing Rules that prescribes eligibility as well as restrictions for issuance of equity shares by Indian public companies.
8	Foreign Investment Limits	Foreign holding shall not exceed limits prescribed under Schedule I to FEMA Non-Debt Rules 2019
9	Pricing	<ul style="list-style-type: none"> — In case of listed public company – Issue Price shall not be less than the price applicable to a corresponding mode of issuance of such equity shares, to domestic investors under the applicable laws. — In case of unlisted public company – Issue Price for initial listing of equity shares shall not be less than the fair market value under FEMA Non-Debt Rules 2019. Subsequent issuance and transfer of equity shares for the purpose of additional listing shall be as per applicable pricing norms of the international exchange and the

		permissible jurisdiction.
10	Regulator	<ul style="list-style-type: none"> — International Financial Services Center Authority (IFSCA) — Ministry of Corporate Affairs — Securities and Exchange Board of India (SEBI) – in case of listed Companies in India
11	Applicable Regulations	<ul style="list-style-type: none"> — FEMA Direct Listing Scheme and applicable provisions of FEMA Non-Debt Rules 2019; — Companies Overseas Listing Rules and applicable provisions under Companies Act, 2013; — Securities Contracts (Regulation) Act, 1956; — Securities Exchange Board of India, 1999 and specific operational guidelines to be issued for overseas listing for listed companies; — Depositories Act, 1996; — Foreign Exchange Management Act, 1999; — Prevention of Money-Laundering Act, 2002; — IFSCA Act 2019 including the IFSCA (Issuance and Listing of Securities) Regulations, 2021

- In addition to above, Indian public companies would also have to comply with the requirements of IFSCA ILS Regulation for listing of equity shares in GIFT-IFSC.

Clarification issued through FAQs:

- Private companies under Companies Act 2013 are not eligible to list their equity shares on permissible international exchanges;
- Public companies falling under sectors prohibited for Foreign Direct Investment (FDI) are not allowed to list their equity shares on permissible international exchanges;
- Indian residents are not regarded as permissible holders and hence are not permitted to trade in equity shares listed on permissible international exchanges. Non-resident Indians (NRI) are permitted to buy or sell equity shares of an Indian company listed on permissible international exchanges.
- It is not mandatory for an unlisted public company intending to list on permissible international exchanges, to also list on domestic exchanges in India. There is no restriction on such companies to opt for listing on domestic as well as international exchanges.
- Potential benefits for companies participating in the Companies Overseas Listing Rules and FEMA Direct Listing Scheme
 - Eliminates foreign currency risks for investors as transaction is in foreign currency; also, there are extended trading hours (more than 20 hours a day) on international stock exchanges in GIFT-IFSC.
 - GIFT-IFSC offers tax incentives and benefits under Income Tax Act, 1961 and any capital gains tax arising on transfer of equity shares of Indian companies in GIFT-IFSC, are exempt from tax.

Way Forward:

Detailed operational guidelines on overseas listing of Indian public company already listed in India, would be released by SEBI soon to provide clarity on provisions / mechanisms for overseas listing by Indian public companies.

With regulatory changes in place, the Income-tax Implication needs analysis for the non-resident shareholders and also for

the Indian company listing shares on such exchanges, including rate of tax and withholding tax applicable on dividends, any foreign exchange differences, obtaining of Permanent Account Number (PAN), filing of return of income by the non-resident investors in India, claim for beneficial rate of tax on such dividends under relevant tax treaties and other operational aspects.

Conclusion:

The notification of Companies Overseas Listing Rules and FEMA Direct Listing Scheme has paved the way for domestic public companies in India to list their equity shares on international exchanges in GIFT-IFSC and tap the global markets for raising funds. This is expected to enable better valuation of Indian companies, in line with global standards of scale and performance, boost foreign investment flows, unlock unprecedented growth opportunities and broaden the investor base. This will particularly benefit Indian companies going global and having ambitions to consider opportunities for expanding presence in other markets.

Source: Notification no. G.S.R. 61(E) issued by MCA vide notification dated 24 January 2024.

Notification no. S.O.332(E) issued by Ministry of Finance vide notification dated 24 January 2024.

FAQs on Direct Listing Scheme.



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