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MCA Allows Public Companies to  
List their Securities on Foreign  
Stock Exchanges

# MCA ALLOWS PUBLIC COMPANIES TO LIST THEIR SECURITIES ON FOREIGN STOCK EXCHANGES

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## ***Introduction***

The Ministry of Corporate Affairs (“MCA”) on October 30<sup>th</sup>, 2023, notified §5 (“**the Notification**”) of the Companies (Amendment) Act, 2020 (“**the Amendment**”).<sup>3</sup> §5 modifies §23 of the Companies Act, 2013 (“**the Act**”), addressing Public Offer and Private Placement. The amendment is intended to grant public companies greater flexibility in listing their securities on international stock exchanges. Additionally, it introduces provisions allowing exemptions to be granted by the Central Government.

## ***Direct Listing of Indian Companies on Foreign Stock Exchanges***

In an attempt to help Indian companies go global, MCA has allowed, certain specified classes of Indian public companies to be able to directly list on foreign stock exchanges. The Amendment will allow companies access to global capital and boost capital outflows. This Notification succeeds Finance Minister Sitharama’s announcement that listed and unlisted domestic companies could directly list their equity shares on the International Financial Services Centre (IFSC), at the Gift City in Gandhinagar. With this Notification, certain classes of Indian public companies (“**Indian Companies**”), would be entitled to be listed in permitted foreign jurisdictions starting with the IFSC in Gift City.

§5 of the Amendment, introduces §23(3) to the Act, making a provision for listing on foreign stock exchanges<sup>4</sup>. Through this provision, the Government has allowed certain public companies to issue specific securities for listing on selected foreign exchanges. However, this will be allowed

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<sup>3</sup> Ministry of Corporate Affairs, Notification No. 4744(E) dated October 30, 2023.

<sup>4</sup> §5 of the Companies (Amendment) Act, 2020:

*“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.”*

only in a few pre-approved stock exchanges in designated foreign jurisdictions. The MCA is also yet to specify the class of companies that are eligible for such listing.

§5 of the Amendment also allows the Government to exempt such listing from certain procedural requirements, such as provisions relating to prospectus, share capital, beneficial ownership requirements, and failure to distribute dividends, by inserting §23(4) into the Act.

### **How will the Companies list their securities on foreign exchanges?**

Domestically listed companies use depository receipts such as the American Depository Receipts (“**ADR**”) or the Global Depository Receipts (“**GDR**”), to list in the foreign markets. Under this route, such companies would entrust their shares with an Indian custodian, who would then issue depository receipts to foreign investors. GDRs are negotiable certificates issued by the depository banks, using which Indian companies could sell their shares in the global stock markets. Whereas, ADRs are issued by a US Depository Bank offering American investors to invest in foreign companies.

However, with this Amendment, the need for the GDRs will be eliminated, allowing companies to directly raise capital in foreign markets. The Companies can now directly sell their shares on the approved foreign stock exchanges, without having to deposit their shares with a foreign depository bank. In direct listings, companies can join foreign stock exchanges without intermediaries. This approach eliminates the middlemen, reduces transaction costs, and promotes transparency. This is more advantageous for Indian Companies and will allow them to attract a larger and diversified pool of capital. This Amendment has been notified at an opportunist time when Indian companies are expanding their international footprint.

### **Advantages of Companies listing their securities on foreign exchanges**

With the Amendment, domestic companies can tap foreign markets to raise funds. It will offer them better valuation and exposure to trade in foreign currencies such as the Dollar. Overseas listing will help Indian companies attract more capital and diversify their investor base. This further enhances the company’s visibility and standing. Given India’s stature as a startup hub, foreign listings would offer better valuation for tech enterprises, potentially invigorating India’s startup sector. It will benefit the startup and unicorn community as another avenue to raise funds and increase their profile globally. It will also add to India’s foreign exchange kitty.

Companies intending to list their securities on foreign exchanges will have to comply with the governance norms at such specified jurisdictions, thereby having to pay more attention to corporate governance and the overall management.

### **Challenges involved in Direct Foreign Listing**

While the MCA's announcement is a first step for direct foreign listing, but more details especially, where and how such securities will be listed, are required. The key junctures to be understood include:

- a) the classes of public companies that avail this benefit,
- b) the class of securities that can be so listed,
- c) the permitted foreign jurisdictions, and stock exchanges,
- d) the procedural exemptions offered to such companies.

While the introduction of the new regime for Indian Companies holds great promise, there are several institutional inconsistencies and hurdles that must be addressed to fully unlock its potential.

Major international exchanges' stringent standards ensure listed companies adhere to top-tier corporate governance. The government may encourage Indian firms to adopt voluntary codes like the National Voluntary Guidelines on Responsible Business Conduct, ensuring high corporate governance standards for those listed on foreign exchanges.

Another critical aspect is the need for significant reforms within the Indian regulatory and legal framework to facilitate seamless cross-border operations for corporations. One immediate concern is the dual compliance burden imposed on companies operating in two distinct jurisdictions. This entails adherence to both the regulatory requirements of the foreign stock exchange and the Indian regulatory landscape, including aspects like beneficial ownership and foreign currency holdings. This dual compliance scenario is likely to result in considerably heightened costs, especially considering the potential for additional requirements from SEBI due to its extended jurisdiction.

### **Other Miscellaneous Amendments in 2020**

The Amendment was introduced with the intent of improving the ease of doing business in India, de-criminalizing various minor offences and regulating producer companies, amongst other aspects.

The key changes brought by the Amendment Act are highlighted below:

**Decriminalisation of minor offences:** The Amendment has done away with imprisonment as a consequence of contravention of certain provisions of the Act. In addition to this, the fines or penalties have been reduced, modified, and omitted for these offences. Notably, it removes imprisonment for contraventions related to the buyback of securities, director disclosures, financial statements, charitable company formation, director disqualification, and committee constitution. Similar adjustments apply to annual return filing, shareholder rights variation, securities transfer, share capital alteration, and reduction of share capital, among others.

**Rights Issue:** The Amendment has amended §62 of the Act and has reduced the time period for providing an offer letter to the existing shareholder under the Rights Issue process to less than 15 days or such lesser number of days that may be prescribed.<sup>5</sup> Earlier, the time period was between 15 to 30 days.

**Periodical Financial Result:** By way of amendment, new §129A has been inserted to the Act, to empower the government to prescribe by rules such class or classes of companies that would be required to:

- Prepare the financial results of the company on a periodical basis, as prescribed.
- To obtain the approval of the Board of Directors and complete audit or limited review of such periodical financial results in such manner as may be prescribed.
- To file a copy with the Registrar within the period of 30 days of completion of the relevant period with such fees.<sup>6</sup>

**Declaration in respect of Beneficial Interest:** Amendments to §89 introduce conditions for Significant Beneficial Owners (SBO), necessitating declarations of beneficial interest in company shares and filing returns with the registrar. Contravention leads to penalties, and the Amendment empowers the Government to grant unconditional exemptions to specific classes of persons from complying with these requirements.<sup>7</sup>

**Corporate Social Responsibility:** Amendments to §135 enable companies exceeding the 2% mandated Corporate Social Responsibility (CSR) contribution to offset excess spending in

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<sup>5</sup> §11 of the Companies (Amendment) Act, 2020.

<sup>6</sup> §25 of the Companies (Amendment) Act, 2020.

<sup>7</sup> §18 of the Companies (Amendment) Act, 2020.

subsequent years. Further, contravention of these provisions would result in penalties. The Amendment also specifies no CSR Committee requirement for amounts less than 50 lakhs.<sup>8</sup>

**Independent Directors and Non-Executive Directors:** By way of amendment to §149 and §197 of the Act, the Independent Directors and Non-Executive Directors have come under the remuneration payable as per Schedule V in case of no profits or inadequate profits.<sup>9</sup>

**Constitution of NCLAT benches:** The Act has inserted §418A with the objective of setting up more benches of the National Company Law Appellate Tribunal (NCLAT) that will ordinarily sit in New Delhi. The said benches of NCLAT will be constituted by at least one Judicial Member and one Technical Member.<sup>10</sup>

**Producer Companies:** The Act introduces producer companies under Chapter XXIA, defined as those engaged in business activities such as production, handling, procurement, marketing, selling, import, export, or other such activities as provided for under §581B of the Companies Act, 1956. This chapter provides regulations with respect to incorporation, registration, formation, voting rights of members, general meetings, share capital, and mergers and amalgamations of producer companies.<sup>11</sup>

### **Conclusion**

The Amendment Act of 2020 has the potential to promote foreign investment by facilitating the ease of doing business. The decriminalization of certain offences would help safeguard investors against criminal liability for minor non-compliances. This will result in an increase in foreign investment, which will boost India's economy. Various measures such as, the constitution of the Appellate Tribunal would provide swifter redressal of grievances in India. The introduction of Producer Companies would also be beneficial for agriculture, handlooms, handicrafts, and other related industries. At the outset, the Amendment Act of 2020 is expected to ensure greater accountability and strengthening of corporate governance norms and compliances in the corporate sector.

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<sup>8</sup> §27 of the Companies (Amendment) Act, 2020.

<sup>9</sup> §32 of the Companies (Amendment) Act, 2020.

<sup>10</sup> §59 of the Companies (Amendment) Act, 2020.

<sup>11</sup> Chapter XXIA of the Companies (Amendment) Act, 2020.