FAQs on Direct Listing Scheme

1. **What is the Direct Listing Scheme?**
   "Direct Listing of Equity Shares of Companies Incorporated in India on International Exchanges Scheme" (the Direct Listing Scheme) is specified in Schedule XI of Foreign Exchange Management (Non-debt Instruments) Rules, 2019. The Scheme provides an overarching framework for issuing and listing of equity shares of public Indian companies on international exchanges. Prior to this, Indian companies were not allowed to issue or list equity shares abroad.

2. **Which provision of the Companies Act, 2013 enables the Scheme?**
   Through the Companies (Amendment) Act, 2020, Section 23(3) was inserted in the Companies Act, 2013 as under

   "(3) 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.

3. **Which types of companies are eligible to list their shares on an international exchange under the Direct Listing Scheme?**
   Under the Scheme, only public Indian companies, listed or unlisted, are allowed to issue and list their shares on an international exchange. As of now, the framework allows unlisted public Indian companies to list their shares on an international exchange. SEBI is in the process of issuing the operational guidelines for listed public Indian companies.

4. **What are private companies and public companies?**
   Section 2(68) of the Companies Act, 2013 defines a *Private company as a company having a minimum paid-up share capital as may be prescribed, and which by its articles, —*
   (i) restricts the right to transfer its shares;
   (ii) except in case of One Person Company, limits the number of its members to two hundred:
   (iii) prohibits any invitation to the public to subscribe for any securities of the company

Section 2(71) of the Companies Act, 2013 defines a *Public Company as a company which—*
(a) is not a private company; and
(b) has a minimum paid-up share capital, as may be prescribed:
Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles.

5. **Whether private companies are eligible under the Scheme?**
   Private companies are not eligible under the scheme as under the Companies Act, they cannot invite subscription from the public as explained in the answer above.

6. **Which public Indian companies are eligible under the new framework?**
   Para 3 of the Direct Listing Scheme provides that a public Indian company shall be eligible to issue equity shares in permissible jurisdiction, if-

   (a) the public Indian company, any of its promoters, promoter group or directors or selling shareholders are not debarred from accessing the capital market by the appropriate regulator;
   (b) none of the promoters or directors of the public Indian company is a promoter or director of any other Indian company which is debarred from accessing the capital market by the appropriate regulator;
   (c) the public Indian company or any of its promoters or directors is not a wilful defaulter;
   (d) the public Indian company is not under inspection or investigation under the provisions of the Companies Act, 2013 (18 of 2013);
   (e) none of its promoters or directors is a fugitive economic offender
   Additional eligibility conditions may be specified by the permitted international exchanges under their regulations.

7. **Which public Indian companies are ineligible under the new framework?**
   Rule 5 of Companies (Listing of equity shares in permissible jurisdictions) Rules, 2024 provide that a company shall not be eligible for issuing its equity shares for listing in accordance with these rules, in case it —
   (a) has been registered under section 8 or declared as Nidhi under section 406 of the Companies Act, 2013;

(b) is a company limited by guarantee and also having share capital;

(c) has any outstanding deposits accepted from the public as per Chapter V of the Companies Act, 2013 and rules made thereunder;

(d) has a negative net worth;

(e) has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holder or any other secured creditor, provided that this clause shall not apply if the company had made good the default and a period of two years had lapsed since the date of making good the default;

(f) has made any application for winding-up under the Act or for resolution or winding-up under the Insolvency and Bankruptcy Code, 2016 (31 of 2016) and in case any proceedings against the company for winding-up under the Act or for resolution or winding-up under the Insolvency and Bankruptcy Code, 2016 (31 of 2016) is pending;

(g) has defaulted in filing of an annual return under section 92 or financial statement under section 137 of the Act within the specified period.

8. What is an international exchange in the context of this Scheme?

As per clause (aaa) of rule 2 of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, International Exchanges are permitted stock exchanges which are mentioned at Annexure to Schedule XI of the Rules. Currently, only two exchanges namely, India International Exchange and NSE International Exchange in GIFT-IFSC under the regulatory supervision of IFSCA are permitted international exchanges.

9. What is the framework applicable for unlisted public Indian companies?

Apart from framework provided under the Scheme, an unlisted Indian company may issue equity shares on international exchanges subject to compliance with the Companies (Listing of equity shares in permissible jurisdictions) Rules, 2024. Further, such company will also be required to adhere to the regulatory framework of permitted international exchanges in GIFT-IFSC as mentioned in Q.24.

10. What is the framework applicable for public Indian companies already listed in India?

Apart from framework provided under the Scheme and Companies (Listing of equity shares in permissible jurisdictions) Rules, 2024 issued by Ministry of

Corporate Affairs, a listed public Indian company is also required to ensure compliance with the conditions and other requirements as per the norms notified by the Securities and Exchange Board of India (SEBI). SEBI is in the process of issuing the operational guidelines for listed public Indian companies. Further, such company will also be required to adhere to the regulatory framework of permitted international exchanges in GIFT-IFSC as mentioned in the answer to FAQs 24.

11. What are the requirements under Companies Act, 2013 for filing of prospectus in respect of direct listing of equity shares on permitted stock exchanges?

As per rule 4(4) of Companies (Listing of equity shares in permissible jurisdictions) Rules, 2023, the concerned unlisted public company shall file the prospectus in e-Form LEAP-1 within seven days after the same has been finalised and filed in the permitted international stock exchange. Such Form will be required to be filed in the MCA-21 Registry electronically for record purposes.

12. Can public companies falling under sectors prohibited for FDI issue or offer equity shares under the scheme?

No.

13. Does condition of sectoral caps apply to public Indian companies participating in the Direct Listing Scheme?

Yes. The equity shares listed on international exchanges will be counted towards the foreign holding of the company.

14. Who can invest or trade under the Direct Listing Scheme?

As per para 2 of the Scheme in Foreign Exchange Management (Non-debt Instruments) Rules, 2019, only the 'permissible holder' can invest, trade, or hold equity shares of Indian companies listed on International Exchanges. For the purposes of this clause, permissible holder is not a person resident in India.

15. Can Indian residents purchase or sell shares of an Indian company listed on an international exchange through the Scheme?

No. Para 2 of the Scheme in Foreign Exchange Management (Non-debt Instruments) Rules, 2019 may be referred.

16. **Are non-resident Indians (NRIs) permitted to buy or sell shares of an Indian company listed on international exchange under this Scheme?**

Yes. Para 2 of the Scheme in Foreign Exchange Management (Non-debt Instruments) Rules, 2019 may be referred.

17. **Can individuals/ entities from land bordering countries invest in shares of Indian companies listed internationally?**

Yes, but with prior Government approval. Para 2 of the Scheme in Foreign Exchange Management (Non-debt Instruments) Rules, 2019 may be referred.

18. **Whether Indian companies listed on international exchanges need to follow domestic rules and regulations also?**

Yes. The Indian company which issues and lists its equity shares on international exchange shall ensure compliance with extant laws relating to issuance of equity shares. This includes requirements prescribed in this Direct Listing Scheme, the Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992, the Depositories Act, 1996, the Foreign Exchange Management Act, 1999, the Prevention of Money-laundering Act, 2002 and the Companies Act, 2013 and rules and regulations made thereunder, as applicable.

19. **What is the meaning of "beneficial owner" of shareholders in the context of the Direct Listing Scheme?**

The beneficial owner is defined as per proviso to sub-rule (1) of rule 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005.

20. **Whether unlisted companies intending to list on international exchanges are required to also list on domestic exchanges?**

It is not mandatory for an unlisted company intending to list on international exchanges to also list on domestic exchanges. However, there is no restriction on such companies to opt for listing on domestic as well as international exchanges.

21. **Are Indian mutual funds permitted to invest in companies listed through the Direct Listing Scheme?**

No. Person resident in India is not allowed to invest or trade in equity shares of Indian companies on international exchanges as per explanation 1 of para 2 of the Scheme.

22. Whether Offer for Sale by existing shareholders has been permitted in the direct listing of Indian companies on international exchanges?

Yes. Para 1 of the Scheme in Foreign Exchange Management (Non-debt Instruments) Rules, 2019 may be referred.

23. What are the potential benefits for companies participating in the Direct Listing Scheme?

The Scheme will allow public Indian companies, especially start-ups and companies in the sunrise and technology sectors, to access global capital beyond the domestic exchanges. 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.

The public Indian companies will have the flexibility to access both markets i.e. domestic market for raising capital in INR and the international market at IFSC for raising capital in foreign currency from the global investors. This initiative will particularly benefit Indian companies going global and having ambitions to look at opportunities for expanding their presence in other markets.

24. What is the IFSCA regulatory framework for direct listing of equity shares of Indian companies on the International Exchanges in GIFT IFSC?

The direct listing of equity shares of Indian companies on the International Exchanges in GIFT IFSC will be in accordance with IFSCA Act, 2019 and Rules and Regulations notified thereunder, including the IFSCA (Issuance and Listing of Securities) Regulations, 2021 (ILS Regulations)[1]. The ILS Regulations provide the regulatory framework for initial listing, disclosure requirements, continuous listing obligations etc. for listing companies on the International Exchanges in GIFT IFSC.

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[1] Available at https://ifsca.gov.in/web/viewer.html?file=/Document/Legal/ifsca-issuance-and-listing-of-securities-regulations-202120072021054301.pdf

25. Are there any specific incentives offered to permissible holders under the Direct Listing Scheme in GIFT-IFSC?

For foreign investors, the scheme will allow them to participate in value creation in Indian companies and earn high returns on their investment facilitated by the world class and business friendly regulatory regime being offered by GIFT-IFSC. The transactions on the stock exchanges in IFSC are in foreign currency, eliminating the currency risk for the investors. The stock exchanges in IFSC have extended trading hours (more than 20 hours in a day) catering to investors of all significant jurisdictions in the world thereby providing convenience and ease of doing business. Additionally, there are various tax incentives provided under the Income Tax Act, 1961, making GIFT IFSC an attractive destination for global investors. Capital gains arising out of transfer of equity shares of Indian companies in GIFT-IFSC is exempted from tax.

26. What is IFSC and what is the aim of setting up IFSC in India?

IFSC stands for International Financial Services Centre set up under section 18 of the Special Economic Zones Act, 2005 and regulated under the International Financial Services Centres Authority Act, 2019. GIFT IFSC is the maiden IFSC set up in India.

One of the main objectives of IFSC is to 'onshore the offshore' i.e. bringing back those India related financial services and transactions that are currently carried outside of India. Further, the objective of IFSC is to develop a strong global connect and focus on the needs of the Indian economy as well as to serve as an international financial platform for the entire region and the global economy as a whole.

27. Who regulates the financial services in GIFT IFSC?

International Financial Services Centres Authority (IFSCA) established under the IFSCA Act, 2019, is the unified regulator for the development and regulation of financial products, financial services and financial institutions in GIFT IFSC. IFSCA has been vested with the powers of all the four financial sector regulators in domestic India viz. RBI, SEBI, IRDAI and PFRDA for regulating the financial services market in GIFT IFSC and for matters connected therewith or incidental thereto.

28. What type of Market Infrastructure Institutions are present in GIFT IFSC?

There are two Stock Exchanges in IFSC namely, India International Exchange (IFSC) Limited and NSE IFSC Limited, subsidiaries of BSE Limited and National Stock Exchange of India respectively, providing the platform for listing and trading of securities in GIFT IFSC.

The clearing and settlement of the trades executed on these Stock Exchanges are carried out by the respective Clearing Corporations namely, India International Clearing Corporation (IFSC) Limited and NSE IFSC Clearing Corporation (IFSC) Limited. There is a depository namely India International Depository IFSC Limited providing depository services in GIFT IFSC.

Additionally, GIFT IFSC has a robust banking ecosystem with presence of several Indian and global banks from various jurisdictions.