

***REPORT OF
THE EXPERT COMMITTEE FOR LISTING OF EQUITY
SHARES OF COMPANIES INCORPORATED IN INDIA ON
FOREIGN STOCK EXCHANGES AND OF COMPANIES
INCORPORATED OUTSIDE INDIA ON INDIAN STOCK
EXCHANGES***

December 4, 2018



**भारतीय प्रतिभूति और विनियम बोर्ड
Securities and Exchange Board of India**

ACKNOWLEDGEMENTS

The Committee is grateful to Mr. Ajay Tyagi, Chairman, SEBI, for constituting this Committee and for entrusting it with this all important task of recommending a framework for direct listing of equity shares of companies incorporated in India on foreign stock exchanges and vice versa.

The Committee wishes to place on record its appreciation for the committed and sincere efforts put in by Mr. Amit Tandon, Deputy General Manager; Mr. Deep Mani Shah, Deputy General Manager; Mr. Anjan Patel, Assistant General Manager and Mr. Prateek Arora, Manager, from SEBI, who assisted the Committee in its research and analysis of various facets relevant to its discussions and also in drafting this Report, within tight timelines.

Members of the SEBI team in the Legal Affairs Department headed by Mr. Ananta Barua, Whole Time Member, including Mr. Amitesh Kumar, Deputy General Manager; Ms. Anju Mahendra, Assistant General Manager and Mr. Chintan Shah, Assistant Manager, deserve a special mention for their legal inputs during Committee's deliberations.

The Committee also acknowledges the valuable contributions made by Ms. Neeta Sanghavi from Avendus Capital Pvt. Ltd; Mr. Yash Ashar, Mr. Arjun Lall, Mr. Anuj Pethia and Ms. Manita Doshi from Cyril Amarchand Mangaldas; Mr. Samarth Jagnani from Morgan Stanley; Ms. Gesu Kaushal and Mr. Harsh Soni from Kotak Investment Banking; Ms. Esha Goel and Mr. Jairo C. Lamatina from Latham & Watkins LLP; Mr. Piyush Chopra and Mr. Sharad Chaudhry from KPMG, and Mr. Manish Kapur and Mr. Kunal Kapur from B S R & Co. LLP for their timely inputs and assistance in compilation and analysis of various relevant data and also for working on initial drafts of this Report.

CONTENTS

INTRODUCTION	1
I. Constitution of the Committee	1
II. Scope of Work.....	2
III. Process followed	2
IV. Structure of the Report	2
CHAPTER 1: ECONOMIC CASE FOR LISTING OF EQUITY SHARES OF COMPANIES INCORPORATED IN INDIA ON FOREIGN STOCK EXCHANGES AND OF COMPANIES INCORPORATED OUTSIDE INDIA ON INDIAN STOCK EXCHANGES	4
I. Introduction	4
II. Benefits to the Indian economy.....	4
III. Benefits to companies incorporated in India	5
IV. Benefits to companies incorporated outside India.....	6
V. Benefits to Indian investors	6
CHAPTER 2: LISTING OF EQUITY SHARES OF COMPANIES INCORPORATED IN INDIA ON FOREIGN STOCK EXCHANGES.....	7
I. Introduction	7
II. Principles for identifying the Permissible Jurisdictions and foreign stock exchanges	7
III. Primary policy issues under various Indian regulations and the requisite changes.....	8
IV. KYC and Anti-Money Laundering requirements applicable to investors / intermediaries.....	10
V. Tax related considerations.....	11
VI. Applicable rules of accounting for preparation of consolidated financial statements.....	12
CHAPTER 3: LISTING OF EQUITY SHARES OF COMPANIES INCORPORATED OUTSIDE INDIA ON INDIAN STOCK EXCHANGES	13
I. Introduction	13
II. Principles for identifying the Permissible Jurisdictions and Indian stock exchanges	13
III. Primary policy issues under various Indian laws and the requisite changes	14
III. Investor KYC	18
IV. Tax related considerations.....	18
CHAPTER 4 : RECOMMENDATIONS.....	20
ANNEXURE-A	23
ANNEXURE-B.....	24
ANNEXURE-C.....	26

INTRODUCTION

I. CONSTITUTION OF THE COMMITTEE

- 1.1 The existing legal framework in India does not permit the direct listing of equity shares of companies incorporated in India on foreign stock exchanges. Similarly, companies incorporated outside India cannot directly list their equity shares on Indian stock exchanges.
- 1.2 The only available routes for companies incorporated in India to access the equity capital markets of foreign jurisdictions is through the American Depository Receipts (“**ADR**”) and Global Depository Receipts (“**GDR**”) regime. Companies incorporated in India can list their debt securities on foreign stock exchanges directly through the masala bonds and/or foreign currency convertible bond (“**FCCB**”)/foreign currency exchangeable bonds (“**FCEB**”) framework. On the other hand, companies incorporated outside India can access the Indian capital markets only through the Indian Depository Receipts (“**IDR**”) framework.
- 1.3 A well-developed, smoothly operating capital market plays an important role in contributing to the health and efficiency of an economy. In addition, there is a strong positive relationship between capital market development and economic growth. Equity listings by companies incorporated in India on foreign stock exchanges would allow them to access foreign capital at a lower cost. The Indian economy, in turn, will experience added growth and economic development. Similarly, equity listings of companies incorporated outside India on Indian Stock Exchanges would improve the efficient allocation of capital and diversification for investors across the Indian economy.
- 1.4 As a result, SEBI felt it appropriate to consider facilitating companies incorporated in India to directly list their equity shares on foreign stock exchanges and companies incorporated outside India to list on Indian stock exchanges, in view, particularly, of the ongoing evolution and internationalization of capital markets across the globe.
- 1.5 Accordingly, to analyse this proposal in detail, SEBI constituted the ‘*Expert Committee for listing of equity shares of companies incorporated in India on foreign stock exchanges and of companies incorporated outside India on Indian stock exchanges*’ on June 12, 2018.
- 1.6 The composition of the Committee * is as follows:
 - i. Mr. Ranu Vohra; Co-founder, Managing Director and CEO; Avendus Capital Pvt. Ltd.
 - ii. Mr. Cyril S. Shroff; Managing Partner; Cyril Amarchand Mangaldas.
 - iii. Mr. Kamal Yadav; Managing Director; Morgan Stanley Technology, Media and Telecom Banking.
 - iv. Mr. Ramesh Srinivasan; Managing Director and CEO; Kotak Investment Banking.
 - v. Mr. Rajiv Gupta; Partner; Latham & Watkins LLP.
 - vi. Mr. Jamil Khatri; Head of Audit; B S R & Co. LLP.

vii. Mr. Sujit Prasad; Executive Director; Securities and Exchange Board of India (Convener).

* *Mr. Neeraj Bhargava; Senior Managing Director and CEO; Zodius Capital Advisors and Mr. Deep Kalra; Chairman and Group CEO; MakeMyTrip.com were also inducted as Members of the Committee, initially. However, they could not contribute to the Committee deliberations due to exigencies of their work.*

II. SCOPE OF WORK

2.1 Broad terms of reference to the Committee were to:

- i. Examine in detail the economic case for permitting direct listing of Indian companies overseas and foreign companies on Indian stock exchanges;
- ii. Examine various legal, operational and regulatory constraints in facilitating Indian companies to directly list their equity shares on foreign stock exchanges and foreign companies to list their equity shares on Indian stock exchanges; and
- iii. Make recommendations for a suitable framework in which to facilitate such direct listing.

III. PROCESS FOLLOWED

3.1 The Committee had its first meeting on July 3, 2018. A blueprint was drawn up whereby it was decided that besides the regular meetings, the Committee Members would connect over teleconference regularly, to keep track of the progress and discuss further developments in the Committee's work.

3.2 In this context, the Committee had four in-person meetings devoted to detailed deliberations. These in-person meetings were supplemented by weekly teleconferences. During these meetings and teleconferences, the Committee tried to delineate relevant policy issues and deliberated extensively on the same.

3.3 Various sub-groups were formed to deliberate on specific issues and formulate a roadmap for the framework contemplated in this Report. One sub-group was tasked with preparing the "economic case" in favour of the intended direct listing framework, while another focused on examining the suitability of the extant legal framework in India and suggest appropriate changes to the existing laws, rules and regulations. Another sub-group looked into the financial requirements and tax related aspects.

IV. STRUCTURE OF THE REPORT

4.1 *Chapter 1* covers the background and economic rationale for liberalising the current framework to facilitate direct listing of equity shares of companies incorporated in India on foreign stock exchanges and of companies incorporated outside India on Indian stock exchanges.

- i. This chapter presents an economic case for liberalising the framework to permit direct listing of equity shares under different scenarios, viz. (i) listing of companies incorporated in India on foreign stock exchanges, and (ii) listing of companies incorporated outside India on Indian stock exchanges.

- ii. The economic case delves into the benefits that may accrue to all the stakeholders, i.e. the investors, issuers and various other market participants, to the companies incorporated in India as also those incorporated outside India and to the Indian economy as a whole.
- 4.2 **Chapter 2** deals with listing of companies incorporated in India on foreign stock exchanges.
- i. This chapter identifies the foreign jurisdictions and the stock exchanges where listing of equity shares of companies incorporated in India may be considered. It also identifies the primary policy issues under various statutes including Foreign Exchange Management Act, 1999 (“**FEMA**”), and laws formulated by other Indian regulators, such as, the Reserve Bank of India (“**RBI**”), SEBI and the Ministry of Corporate Affairs (“**MCA**”). Further, it also touches upon investor protection measures, investor KYC mechanism and the taxation regime.
- 4.3 **Chapter 3** outlines the general framework for the Committee’s proposals on listing of equity shares of companies incorporated outside India on Indian Stock Exchanges.
- i. Similar to chapter 2, this chapter identifies the jurisdictions whose companies may be permitted to list their equity shares and the Indian stock exchanges for such listing. It also identifies the regulations, which will require amendments to allow companies incorporated outside India to list their equity shares on Indian stock exchanges and for Indian investors to invest in such companies, and also includes the key changes required in these regulations.
- 4.4 **Chapter 4** summarizes the major recommendations of the Committee.

CHAPTER 1 - ECONOMIC CASE FOR LISTING OF EQUITY SHARES OF COMPANIES INCORPORATED IN INDIA ON FOREIGN STOCK EXCHANGES AND OF COMPANIES INCORPORATED OUTSIDE INDIA ON INDIAN STOCK EXCHANGES

I. INTRODUCTION

1.1 The fast growing liberalised Indian economy is anchored on the principles of transparency and ease of doing business promoted by Government of India. This has provided a boost to foreign corporates to actively participate in the growth of the Indian economy and compete with established as well as new companies incorporated in India. This may, therefore, be an opportune time to consider further liberalising the equity capital raising framework by allowing companies incorporated outside India the opportunity to access the vibrant Indian equity capital markets. At the same time, it is also an opportune time to enable companies incorporated in India to directly access the global equity capital markets.

1.2 This chapter examines the economic case for liberalising India's current legal and regulatory framework to permit direct listing of equity shares under different scenarios, viz. (i) listing of equity shares of companies incorporated in India on foreign stock exchanges with a view to benefit such companies; and (ii) listing of companies incorporated outside India on Indian stock exchanges, with a view to benefit the Indian economy, the companies incorporated in India as also the Indian investors.

II. BENEFITS TO THE INDIAN ECONOMY

2.1 ***Increased competitiveness for companies incorporated in India.*** Corporate India's health is a critical determinant of India's future in a global marketplace. Several companies incorporated in India across various industries, especially in the technology and internet sectors, are increasingly facing competition from foreign multinational companies within the Indian domestic market, as well as globally, as they expand into foreign markets. Listing on a foreign stock exchange will increase the relative competitiveness of such companies incorporated in India vis-à-vis their global competitors by enabling them to derive the same benefits currently enjoyed by their international counterparts, whether in terms of access to capital (including at reduced costs) or in terms of other strategic advantages, thus benefiting the health of the Indian economy.

2.2 ***Competitive pressures to stimulate efficiency and growth.*** Allowing companies incorporated in India to list on foreign stock exchanges and companies incorporated outside India to list on Indian stock exchanges will expose the Indian capital markets to global competition. As a result, Indian capital markets will innovate and maximise efficiencies so as to compete effectively with other jurisdictions, with positive externalities for the entire financial ecosystem. This will promote the development of the Indian financial system. Traders and other integrated financial services providers will also generally benefit, including as a result of an increase in the volume and variety of financial products that will be offered in India, which will contribute to the deepening India's high-end financial skills base and expand India's market for integrated financial services.

2.3 ***Development of finance as a high-value added export.*** Finance can be a high value-added export sector for India, much like information technology has become a high value-added export success story for India. The Indian economy will, therefore, benefit from the development of a world-class financial system that is a provider of capital to companies incorporated outside India.

2.4 ***Increased attractiveness to growing technology sector.*** Several leading Indian technology and internet companies are domiciled overseas and are not currently able to list their securities on Indian stock exchanges. Permitting these companies to list on the Indian stock exchanges will facilitate the development of specialized investor and analyst clusters with industry-specific

knowledge and valuation expertise. This will make Indian stock exchanges more attractive to the technology and internet sectors, which have grown significantly in India over the last decade (with over 90 Indian technology and internet companies achieving valuations of over US\$100 million) and currently demonstrate significant potential for future exchange listings as these companies continue to mature.

2.5 ***Boost the “India” brand globally.*** The proposed liberalization of India’s regulatory framework will also boost the brand “India” and its profile globally, in the same way that numerous listings by companies, from other jurisdictions, including China, on major international exchanges are seen to have strengthened the brand and profile of their country of incorporation among the global investor community as an increasing number of companies incorporated in India list on key global stock exchanges like NASDAQ, NYSE or LSE. For example, over the period 2013-2018, 91 companies with business operations primarily in China raised US\$44 billion through initial public offerings on NYSE and NASDAQ in the United States.

2.6 ***Improve economic relations with other countries.*** Further, enabling listing of foreign corporates in India and listing of Indian corporates abroad will be an important economic and diplomatic tool in the hands of the Government of India, which can aid bilateral and multi-lateral ties and help create the comprehensive economic partnerships needed to aid the development of Indian economy.

III. BENEFITS TO COMPANIES INCORPORATED IN INDIA

3.1 ***Alternate source of capital.*** Companies incorporated in India can benefit from accessing capital markets outside of their country of incorporation for various reasons. Many of these benefits are attained from a reduction in the cost of capital in advanced economies with developed financial markets. Given inherent inflation and relatively smaller domestic institutional and non-institutional pools of capital, the cost of capital in India is still higher vis-à-vis that for a foreign corporate thereby putting the Indian company at a disadvantage in the marketplace. Thus, a simple and principle based international listing regime which enables all companies incorporated in India to raise capital in the market which optimizes cost and provides the greatest benefits in terms of value, quantum, quality and branding is the need of the hour.

3.2 ***Broader investor base.*** Listing on foreign stock exchanges broaden and diversify the pool of investors that are able to acquire and trade the company’s shares, which increases the demand pool for the company's shares and helps to decrease the cost of capital. For example, a company incorporated in India listed in the United States would be able to access numerous investment funds that would otherwise be prevented by their internal investment criteria from investing in companies not listed in the United States. Such listings also enable companies to diversify their capital-raising activities rather than being reliant only on their domestic market. In addition, Indian start-up or emerging-growth companies, for example, will be able to access capital from investors overseas that may be more receptive to their securities than Indian investors, who have typically focused on companies with proven track records of profitability and growth, and have generally exhibited less appetite for start-up or emerging-growth companies.

3.3 ***Better valuation.*** Companies listing on foreign stock exchanges with sophisticated asset management infrastructure generally expect to obtain more accurate valuations on their securities than in their domestic capital markets. For example, overseas listings enable companies to access specialized industry-specific investor classes, such as high-tech investors, who possess institutional sectoral expertise and are thus better able to value these securities. Listings on foreign stock exchanges can also increase analyst coverage for the listed shares and facilitate clearer comparisons against other peer companies that are listed overseas, each of which contribute toward more accurate benchmarking and valuations.

3.4 ***Other strategic benefits.*** Additionally, companies incorporated in India may derive benefits from listing on a foreign stock exchange for other strategic reasons, including facilitation of their international employee compensation strategies, increase in their brand awareness and visibility, and by gaining a currency of exchange with which to pursue their international expansion plans.

IV. BENEFITS TO COMPANIES INCORPORATED OUTSIDE INDIA

4.1 ***Fruitful association with brand “India”.*** India accounted for nearly 3.5 per cent of world GDP and 2.5 percent of global stock market capitalization in Fiscal 2017. Indian capital markets are amongst the top 10 from a trading volume perspective, with domestic mutual funds and insurers having invested more than US\$ 30 Bn in Indian equity markets during the last 2 years. With listing in India, companies incorporated outside India may also seek the opportunity of raising equity capital from Indian domestic institutions. Additionally, companies incorporated outside India wanting to access Indian consumers and also Indian skilled labour may benefit from their “Indian” association that would come through their listing in India.

4.2 ***Access to Indian markets.*** Also, with over 5,000 listed companies and more than 58 companies in the global Fortune 2000 as of June 2018, India represents a vibrant mix of small and large companies that access capital from domestic and international investors (under the existing foreign investment and foreign direct investment regimes) to fund their growth. In addition, Indian capital markets benefit from a credible corporate governance and regulatory framework, and general investor confidence in Indian regulators’ no-nonsense, business-like and facilitative approach. In view of these positive attributes, India’s capital markets and stock exchanges are likely to be most attractive to various companies incorporated outside India.

V. BENEFITS TO INDIAN INVESTORS

5.1 ***Increased diversification of portfolios.*** Currently, the portfolios of Indian households and institutional investors exhibit lower levels of diversification resulting from an over-emphasis on Indian assets. This home bias is likely to decline when global assets are made more visible and more accessible through the domestic market. Allowing companies incorporated outside India to access Indian capital markets and list their shares on Indian stock exchanges (including certain companies incorporated in India that are currently domiciled overseas, such as certain technology and internet companies) will increase investor choice and facilitate investments by Indian savers in the growth businesses of companies incorporated outside India. For example, wealthy Indian investors may desire to invest in shares of global blue chip companies, and the proposed liberalization of the Indian regulatory framework is an effective means of satiating the desire of such Indian investors.

5.2 ***Participation in wealth created by global companies.*** Participation by Indian investors in the equity share capital of companies incorporated outside India would also enable Indian investors in partaking in the wealth generated by multi-national corporations that have significant impact on Indian lives. Global internet companies such as Apple, Facebook, Google, Amazon, etc. are the prime examples which have permeated the daily lives of billions. Direct listing of equity shares by companies incorporated outside India on Indian stock exchanges would enable Indian investors to participate in such wealth creation. Further, allowing companies incorporated outside India to access Indian capital markets will create a vibrant domestic market also enabling the investors to reduce their risk exposure at the same levels of expected returns.

CHAPTER 2 - LISTING OF EQUITY SHARES OF COMPANIES INCORPORATED IN INDIA ON FOREIGN STOCK EXCHANGES

I. INTRODUCTION

This chapter lays down the recommended framework for listing of equity shares of companies incorporated in India on foreign stock exchanges. The Committee's proposals for this framework addresses the following aspects:

- 1.1 Principles for identifying the Permissible Jurisdictions and foreign stock exchanges;
- 1.2 Primary policy issues under various Indian regulations and the requisite changes;
- 1.3 Know Your Client (KYC) and Anti-Money Laundering (AML) requirements applicable to investors and intermediaries
- 1.4 Tax related considerations; and
- 1.5 Applicable accounting standards for the preparation and presentation of consolidated financial statements.

II. PRINCIPLES FOR IDENTIFYING THE PERMISSIBLE JURISDICTIONS AND STOCK EXCHANGES

- 2.1 As outlined in chapter 1, companies incorporated in India can increase their global competitiveness by having access to capital at low cost from advanced economies on their well-developed stock exchanges under a suitable framework. Such a framework, however, should provide for measures to avoid illegal transactions such as round tripping of illegal funds.
- 2.2 Accordingly, the Committee recommends that the framework should allow listing only on specified stock exchanges in *Permissible Jurisdictions* outside India. A Permissible Jurisdiction includes a jurisdiction which has treaty obligations to share information and cooperate with Indian authorities in the event of any investigation. It is recommended that Permissible Jurisdiction should be defined to mean a jurisdiction:
 - i. that is a member of the Board of International Organization of Securities Commissions ("*IOSCO*"), and whose securities market regulator is either a signatory to the IOSCO's multilateral memorandum of understanding or is a signatory to a bilateral memorandum of understanding with SEBI for information sharing arrangements; **and**
 - ii. that is a member of the Financial Action Task Force ("*FATF*"); **and**
 - iii. that is not identified in the public statement of the FATF as:
 - a. a jurisdiction having strategic anti-money laundering or combating the financing of terrorism deficiencies to which countermeasures apply; or

- b. a jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the FATF to address the deficiencies;
 - iv. any other jurisdiction notified by Central Government in consultation with SEBI and / or other regulatory authorities, following an overall review and evaluation of such jurisdiction's capital markets regulations.
- 2.3 The criteria prescribed above 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. Based on these principles, the Committee recommends that listing of companies incorporated in India may be allowed on specified foreign stock exchanges of Permissible Jurisdictions. Further, even out of such Permissible Jurisdictions, the Committee feels that to begin with, those jurisdictions may be considered that have deep capital markets, high liquidity and strong listing conditions. The Committee, in this context, perused the data from "World Federation of Exchanges" ("WFE") and identified the top stock exchanges in terms of cash market turnover. Accordingly, the initial list of recommended Permissible Jurisdictions along with the specified stock exchanges is placed as *Annexure-A* to this Report.

III. PRIMARY POLICY ISSUES UNDER VARIOUS INDIAN REGULATIONS AND THE REQUISITE CHANGES

- 3.1 The framework for listing of equity shares of companies incorporated in India on foreign stock exchanges could be legally implemented through certain amendments, to the current regulatory framework in India. The key statutes that require certain amendments and / or clarifications are the following:
- i. Foreign Exchange Management Act, 1999 together with regulations, press notes, circulars and notifications thereunder, including Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 ("**FEMA 20R**") (collectively, "**FEMA**"); and
 - ii. The Companies Act, 2013, together with the rules, circulars and notifications thereunder (the "**Companies Act**").
- 3.2 **FEMA**
- i. Regulation 5(1) of FEMA 20R permits a person resident outside India to subscribe, purchase and sell capital instruments of a company incorporated in India (which is either unlisted or listed in India) subject to conditions specified in Schedule 1 of FEMA 20R.
 - ii. FEMA, however, at present, does not specifically contemplate issuance of equity shares by a company incorporated in India that is listed on a stock exchange outside India, to a person resident outside India.
 - iii. The Committee recommends the introduction of Part B to Schedule 1 of FEMA 20R, which would set out the regulatory framework for purchase by a person resident outside India of equity shares of a company incorporated in India listed on a foreign stock exchange. A proposed draft of Part B of Schedule 1 of FEMA 20R is placed as *Annexure-B* to this report.
 - iv. The salient features of the said Schedule include the following:

- a. The equity shares of companies incorporated in India should be allowed to be listed on specified stock exchanges in Permissible Jurisdictions and will continue to be subject to Indian regulatory restrictions under FEMA 20R, such as prohibited activities, entry routes, sectoral caps and related conditions, as may be existing from time to time.
- b. Any person resident outside India, eligible to make foreign investments under FEMA 20R would qualify as a 'permissible investor'. FEMA 20R prohibits entities incorporated in certain countries from investing in India, except under the Government route. This restriction will continue to apply for investments in equity shares of a company incorporated in India listed on foreign stock exchanges as well.
- c. Receipt and retention of proceeds would be permitted in a foreign currency account overseas, similar to the framework for ADR/GDR proceeds.

3.3 *Companies Act*

- i. Chapter III (*Prospectus and Allotment of Securities*) of the Companies Act which prescribes the framework for public offers and private placements of securities, is applicable to all companies incorporated in India, including companies that issue ADRs/GDRs as well as those which would propose to list their equity shares on foreign stock exchanges.
- ii. In order to enable the framework for listing of equity shares of companies incorporated in India on foreign stock exchanges, the Committee recommends that MCA may issue a notification, similar to the general circular issued for masala bonds dated August 03, 2016 clarifying, inter alia, that Chapter III of the Companies Act and related rules will not apply to listing of equity shares of companies incorporated in India on foreign stock exchanges.
- iii. The Companies Act mandates Indian companies to maintain register of members. Section 88 of the Companies Act requires every company to maintain a register of members for each class of equity shares held by each member residing in or outside India as well as a register of other securities holders, and these registers are required to include certain identification and demographic details of the members. Section 88(3) of the Companies Act provides that the register and index of beneficial owners maintained by a depository under Section 11 of the Depositories Act, 1996 ("**Depositories Act**") shall be deemed to be a corresponding register for this purpose. Section 88(4) of the Companies Act also permits companies to maintain a 'foreign register' containing the names and particulars of members and other securities holders or beneficial owners residing outside India.
- iv. As an example, in case of ADR/GDR, the name of Global Depository/Custodian is recorded in the books of Indian Depository and is taken to be sufficient to meet the requirement under the Companies Act.
- v. The Committee, therefore, recommends that a similar framework may also be applicable in case of overseas listing and necessary clarifications in this respect may be issued by MCA.

3.4 ***SEBI Regulations***

- i. Listing of equity shares of unlisted companies incorporated in India on foreign stock exchanges would be governed by the listing framework of the concerned Permissible Jurisdiction. The relevant Indian laws like Companies Act would also continue to apply to such companies.
- ii. As regards such listing of a listed Indian company, such a company shall comply, at all times, with rules/ regulations/ laws/ initial and continuous listing/ disclosure requirements, as are applicable to companies listed in India. In case of variation in the compliance obligations/ requirement for additional compliances in Permissible Jurisdiction, a comparative analysis of the provisions that are applicable in India along with compliance of the same and the requirements applicable in the Permissible Jurisdiction shall be given by the company.

IV. KYC AND AML REQUIREMENTS APPLICABLE TO INVESTORS AND INTERMEDIARIES

4.1 ***Requirements under Permissible Jurisdiction's regulatory framework***

- i. Investors, and intermediaries such as dealers, initial purchasers, underwriters, share transfer agents and depositories, associated with listing of companies incorporated in India on a foreign stock exchange in a Permissible Jurisdiction will be required to register and conduct their business in compliance with the KYC and AML requirements of the concerned Permissible Jurisdiction.
- ii. The Committee noted that the masala bonds under the relevant RBI framework can only be issued and subscribed in a country which is a member of FATF/ FATF-Style Regional Body ("FSRB"), and whose securities regulator is a signatory to IOSCO MMoU/ bilateral MoU with SEBI, and the KYC requirements of those jurisdictions are applicable. However, in case of proposed listing of equity shares on a foreign stock exchange, the criteria for Permissible Jurisdictions are stricter, as residents of only FATF members whose securities regulators are also members on the Board of IOSCO are eligible to invest. Further, the list of Permissible Jurisdictions have reporting requirements that comply with the United Nations' International Convention for the Suppression of the Financing of Terrorism and fairly developed legislative frameworks for reporting, preventing money laundering and combating financing of terrorism.
- iii. In view of the above, the Committee recommends the KYC and AML framework existing in Permissible Jurisdictions as acceptable standards for compliance with KYC and AML norms.

4.2 ***Details of beneficial ownership under Companies Act and significant beneficial ownership under the Companies (Significant Beneficial Owners) Rules, 2018***

- i. The Companies (Significant Beneficial Owners) Rules, 2018 require every beneficial owner of equity shares holding 10% or more of the ultimate beneficial interest in a company to file a declaration (Form No. BEN-1) to the company. When any such declaration is received by the company, it has to

file a return (Form No. BEN-2) with the Registrar of Companies (“**RoC**”) regarding the declaration. The information required in the declaration and return forms include certain identification and demographic details of the registered owner and beneficial owner.

- ii. The Companies (Significant Beneficial Owners) Rules, 2018 provide that in case the ‘significant beneficial owner’ is not an individual/natural person, the natural person in control of such company shall be determined as the ‘significant beneficial owner’. The Committee noted that the threshold prescribed under these rules, is similar to that observed in the Permissible Jurisdictions and necessary disclosures in compliance with such requirements are made by the investors. Accordingly, the Committee recommends that the beneficial ownership requirement can be met by submitting the information as provided by the investors in the manner prescribed in the Permissible Jurisdictions.

V. TAX RELATED CONSIDERATIONS

5.1 *Tax implications on transfer of equity shares of a company incorporated in India listed on a foreign stock exchange*

- i. Under current tax laws in India, income earned from transfer of equity shares of an unlisted Indian company listed on a foreign stock exchange would be subject to capital gains tax in India, as these shares would be considered ‘capital assets situated in India’, because these are shares of a company incorporated in India.
- ii. Under the extant provisions, the transfer of GDRs by a non-resident to another non-resident is not regarded as taxable ‘transfer’ under Section 47(vii)(a) of the Income Tax Act, 1961 (“**Income Tax Act**”) and consequently, the non-resident does not have any tax obligation in India.
- iii. The Committee recommends that the matter relating to tax on issuance and transfer of equity shares of companies incorporated in India listed on a foreign stock exchange and related reporting obligations, may be taken up with the Department of Revenue for providing clarity. For this purpose, reference may be drawn to ADR/ GDR regime.

5.2 *Issuance of equity shares of a company incorporated in India on a foreign stock exchange*

- i. Under Section 56 of the Income Tax Act, if a person receives shares of a company incorporated in India for consideration which is less than the fair market value (“**FMV**”) determined as per valuation norms prescribed under Rule 11UA of the Indian Income tax Rules, 1962 (“**Income Tax Rules**”), the difference between the FMV and the subscription price would be subject to tax in the hands of the person (the non-resident in this case) acquiring the shares (subject to availability of any benefits under the applicable tax treaty).
- ii. Since the price at which shares would be issued on the foreign stock exchanges would be determined by the market forces in the respective jurisdiction pertaining to the particular shares, it is quite possible that the shares may be issued at a price which is less than the FMV of the shares

determined as per Rule 11UA of Income Tax Rules, for the purposes of Section 56 of the Income Tax Act. The Committee recommends that the matter may be taken up with the Department of Revenue to take necessary steps for clarifying the applicability of Section 56 in case of transactions pertaining to shares of companies incorporated in India listed on foreign stock exchanges including relevant amendments in the tax valuation rules.

VI. APPLICABLE RULES OF ACCOUNTING FOR PREPARATION OF CONSOLIDATED FINANCIAL STATEMENTS

- 6.1 Through the framework, the Committee envisages permitting listing of equity shares of a company incorporated in India on a foreign stock exchange for subscription by investors in such foreign jurisdictions. The accounting standards in the country of listing may require preparation/presentation of consolidated financial statements either in accordance with accounting/auditing standards applicable to domestic companies in such jurisdiction or comparable global standards. However, the company would be required to prepare its consolidated financial statements in accordance with applicable Indian Accounting Standards, as applicable from time to time, for statutory reporting purposes.
- 6.2 As an example, if the Indian company seeks to list in the United States, it would need to present audited consolidated financial statements as follows:
- i. Under US GAAP; or
 - ii. Under IFRS as issued by the International Accounting Standard Board with no quantitative reconciliation to US GAAP; or
 - iii. Under Indian GAAP/Ind AS with a quantitative reconciliation to US GAAP.

CHAPTER 3 - LISTING EQUITY SHARES OF COMPANIES INCORPORATED OUTSIDE INDIA ON INDIAN STOCK EXCHANGES

I. INTRODUCTION

This chapter lays down the recommended framework for listing of equity shares of companies incorporated outside India on Indian stock exchanges. The Committee's proposals for this framework addresses the following aspects:

- 1.1 Principles for identifying the Permissible Jurisdictions whose companies may be permitted to list their equity shares and the Indian stock exchanges for such listing;
- 1.2 Primary policy issues under various Indian laws and the requisite changes;
- 1.3 Investor KYC; and
- 1.4 Tax related considerations.

II. PRINCIPLES FOR IDENTIFYING THE PERMISSIBLE JURISDICTIONS OF COMPANIES INCORPORATED OUTSIDE INDIA AND INDIAN STOCK EXCHANGES

- 2.1 It is essential that companies incorporated outside India, listing on Indian stock exchanges be incorporated in, and subject to the jurisdiction of, regulators from jurisdictions that are legally required to extend cooperation to Indian regulatory authorities by way of sharing of information and providing assistance in enforcement actions.
- 2.2 Therefore, the Committee recommends that similar to Chapter 2, Permissible Jurisdiction may be defined to mean a jurisdiction:
 - i. that is a member of the Board of International Organization of Securities Commissions ("**IOSCO**"), and whose securities market regulator is either a signatory to the IOSCO's multilateral memorandum of understanding or is a signatory to a bilateral memorandum of understanding with SEBI for information sharing arrangements; **and**
 - ii. that is a member of the Financial Action Task Force ("**FATF**"); **and**
 - iii. that is not identified in the public statement of the FATF as:
 - a. a jurisdiction having strategic anti-money laundering or combating the financing of terrorism deficiencies to which countermeasures apply; or
 - b. a jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the FATF to address the deficiencies;
 - iv. any other jurisdiction notified by Central Government in consultation with SEBI/ other regulatory authorities, following an overall review and evaluation of such jurisdiction's capital markets regulations.

- 2.3 As earlier discussed in Para 2.3 of Chapter 2 to this report, the initial list of recommended Permissible Jurisdictions (as per WFE data) as also a list of the specified stock exchanges in India, is placed as *Annexure-C*.

III. PRIMARY POLICY ISSUES UNDER VARIOUS INDIAN LAWS AND THE REQUISITE CHANGES

- 3.1 The Committee has identified the following key statutes that will be required to be amended to allow companies incorporated outside India to list their shares on Indian stock exchanges and to allow Indian investors to invest in such companies:
- i. Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004;
 - ii. Foreign Exchange Management (Deposit) Regulations, 2016;
 - iii. Companies Act, 2013
 - iv. SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018;
 - v. SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015
 - vi. Other related SEBI Regulations, viz. SEBI (Prohibition of Insider Trading) Regulations, 2015; SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011; SEBI (Buy Back of Securities) Regulations, 2018; and SEBI (Delisting of Equity Shares) Regulations, 2009.

FOREIGN EXCHANGE MANAGEMENT (TRANSFER OR ISSUE OF ANY FOREIGN SECURITY) REGULATIONS, 2004

- 3.2 The Committee proposes that the Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004 be amended to (i) specifically permit investments by resident Indians in securities of companies incorporated outside India listed on Indian stock exchanges, and (ii) enable resident Indians to transfer securities of companies incorporated outside India listed on Indian stock exchanges.
- 3.3 Under the existing Indian regulatory framework, only companies incorporated in India and listed on an Indian stock exchange, may have the ability to invest in the securities of a listed company incorporated outside India, and even then, only on a short term basis. Beyond this, any investment in a listed company incorporated outside India by any other Indian entity or person would need to be in the form of a “joint venture”, on a long term basis, and only where such Indian entity or person holds the securities along with foreign promoters (therefore evidencing a strategic investment). The Committee, therefore, recommends that enabling provisions should be included in the regulatory framework to permit investments and transfers by resident Indians in / of companies incorporated outside India listed on Indian stock exchanges.

FOREIGN EXCHANGE MANAGEMENT (DEPOSIT) REGULATIONS, 2016

- 3.4 The Committee proposes that the Foreign Exchange Management (Deposit) Regulations, 2016 be amended to enable companies incorporated outside India to open bank accounts in India denominated in Indian rupees for listing purposes and transactions related thereto.
- 3.5 Under these regulations, a company incorporated outside India is permitted to open a Non-Resident Ordinary Account (“**NRO Account**”) and a Special Non-Resident Rupee Account (“**SNRR Account**”). Remittances outside India from the NRO Account are permitted only with RBI approval and consequently would not be practical to be used by the company incorporated outside India with respect to remittance of listing proceeds. An SNRR Account is a special account opened for specific business and should be concurrent with the term of the contract or period of business, not exceeding 7 (seven) years. SNRR Account seems to be contemplated for business or project specific matters and not for general banking purposes or to receive consideration on shares.
- 3.6 Accordingly, the Committee recommends that these regulations be amended to specifically permit a company incorporated outside India i.e. a foreign issuer, to open an account in India for listing purposes and transactions related thereto.

COMPANIES ACT, 2013

- 3.7 Section 390 of the Companies Act, 2013 enables the Central Government to make rules for offer of IDRs, requirement of disclosures in prospectus, manner of sale/ transfer/ transmission of IDRs, etc. The Committee recommends that a similar provision enabling SEBI to make regulations to permit listing of equity shares of companies incorporated outside India on India stock exchanges, may be introduced in the Companies Act.

SEBI (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2018 (“ICDR REGULATIONS”)

- 3.8 The ICDR Regulations provides a general framework for eligibility and disclosure requirements in connection with the issuance of equity shares by companies incorporated in India as well as issuance of IDRs in India by companies incorporated outside India. The Committee proposes to include a corresponding framework in the extant ICDR regulations, for listing of equity shares of companies incorporated outside India (whether or not listed outside India) on Indian stock exchanges.
- 3.9 Following the initial stage of implementation of the proposed framework, additional changes may be proposed to other provisions of the ICDR Regulations (including, for example, additional provisions relating to rights issuances, preferential allotment or QIP).
- 3.10 The key features of the proposed framework in the initial stage are outlined below:
- *Company-specific eligibility criteria* - These company-specific criteria are guided by investor protection considerations, including the principle that

fraudulent or debarred companies should not be allowed to access Indian capital markets.

- *Removal of requirement of identifying “Promoter(s) / Promoter group”* - Since this concept is unique to India, the Committee proposes to remove this requirement from the rules applicable to companies incorporated outside India listing on Indian stock exchanges.

In case the company incorporated outside India has identified controlling or significant shareholders under the law of its country of incorporation, certain material information regarding such controlling or significant shareholders will be required to be disclosed such as material litigation relating to such controlling or significant shareholders.

- *Financial statement requirements:* The Committee proposes that companies incorporated outside India listing on Indian stock exchanges be required to prepare and disclose English language consolidated financial statements in accordance with one of the following accounting standards:
 - Ind AS;
 - IFRS as issued by the IASB (IFRS);
 - US GAAP; or
 - Local GAAP of the country of incorporation.

If consolidated financial statements are prepared in accordance with IFRS or US GAAP, the issuer shall annex a summary of significant differences between IFRS or US GAAP, as applicable, and Ind AS (with no quantitative reconciliation). In case the company incorporated outside India opts to prepare and disclose the consolidated financial statements as per its country of incorporation’s local GAAP, a quantitative reconciliation statement between the country of incorporation’s local GAAP and Ind AS for the periods presented, and summary of significant differences between the country of incorporation’s local GAAP and Ind AS has to be annexed.

Consolidated financial statements shall include the statement of profit and loss, balance sheet, cash flow statement and statement of changes in equity and related notes to the financial statements, to be provided in the reporting currency as per the country of incorporation and / or in Indian Rupees;

Convenience translation of the most recent fiscal year and interim period consolidated financial statements into Indian Rupee, the exchange rate to be used as of the most recent balance sheet date; and

- *Issue size and minimum float:* To ensure adequate liquidity, reduce scope for manipulation and also that only high quality companies get listed, minimum thresholds related to free float, issue size and minimum number of investors are desirable. Accordingly, the Committee recommends that minimum 10% of paid-up capital may be listed on Indian stock exchanges(s). Further, the issue size should be at least INR 1,000 crore and allotment should be made to at least 200 investors.

SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015 (“LODR REGULATIONS”)

- 3.11 The LODR Regulations provides a framework for post-listing obligations and ongoing disclosure requirements of a listed entity which has, inter alia, listed its IDRs on Indian stock exchanges. As per the LODR Regulations, the listed entity shall comply, at all times, with the rules/regulations/laws of the country of origin, i.e. the home country. Further, specifically, in the context of compliance with corporate governance requirements, the regulations provide that the listed entity shall comply with the corporate governance provisions as applicable in its home country and other jurisdictions in which its equity shares are listed. The listed entity shall submit to stock exchange a comparative analysis of the corporate governance provisions that are applicable in its home country and in the other jurisdictions in which its equity shares are listed along with the compliance of the same vis-à-vis the corporate governance requirements applicable under regulation 17 to regulation 27 of the LODR Regulations.
- 3.12 The Committee proposes that, to begin with, IDR requirements may be made applicable, *mutatis mutandis*, to listing of equity shares by listed companies incorporated outside India on Indian stock exchanges as well. The recommendations regarding financial statements and a few other issues are specifically spelt out below. Unlisted companies incorporated outside India, intending to list in India, shall be required to ensure compliance with the Indian framework with respect to continuous listing, with suitable amendments as proposed in case of initial listing as detailed at Paragraphs 3.9 and 3.10 of this Chapter.
- *Financial statement requirements:* Foreign companies listing on Indian stock exchanges be required to prepare and disclose English language consolidated financial statements in accordance with one of the following accounting standards: Ind AS; IFRS; US GAAP; or the country of incorporation’s local GAAP.
 - Consolidated financial statements shall contain the following information:
 - Statement of profit and loss, balance sheet, cash flow statement and statement of changes in equity and related notes to the financial statements, to be provided in the reporting currency as per the country of incorporation and / or in Indian Rupees;
 - Convenience translation of the most recent fiscal year and interim period into Indian Rupees, the exchange rate to be used as of the most recent balance sheet date; and
 - Statement of difference to be provided setting forth the differences between the accounting standard used for the preparation consolidated financial statements of the company incorporated outside India and IndAS. If consolidated financial statements are prepared in accordance with IFRS or US GAAP, the issuer shall annex a summary of significant differences between IFRS or US GAAP and Ind AS (with no quantification). In case the issuer opts to prepare and disclose the consolidated financial statements as per country of incorporation’s local GAAP, a quantitative reconciliation statement between country of incorporation’s local GAAP and Ind AS for the periods presented, and summary of significant differences between the country of incorporation’s local GAAP and Ind AS has to be annexed.

- *Minimum Float:* As proposed in case of initial listing, minimum 10% of the paid-up capital of the company incorporated outside India must remain publicly listed in India.
- *Manner of voting on the shareholders' resolutions:* Mandatory e-voting requirement may be made applicable.

SEBI REGULATIONS ON (I) PROHIBITION OF INSIDER TRADING, (II) TAKEOVERS, (III) BUYBACK, AND (IV) DELISTING

- 3.13 The SEBI (Prohibition of Insider Trading) Regulations, 2015, SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, SEBI (Buy Back of Securities) Regulations, 2018 and SEBI (Delisting of Equity Shares) Regulations, 2009, currently set forth the relevant capital market regulations in the context of listed companies in India. The same do not cover the scenarios involving publicly traded securities of companies incorporated outside India that would be listed on Indian stock exchanges.
- 3.14 The Committee proposes that these regulations may be suitably amended to extend the applicability of the existing regulations to companies incorporated outside India listing on Indian stock exchanges. If the company incorporated outside India is already listed in its country of incorporation, the regulatory requirements applicable in such country shall also apply.

The key changes would include the following:

- *Definition of Company / Target Company:* To amend the definition of “company” to extend applicability of these regulations to companies incorporated outside India listing their shares on an Indian stock exchange
- *Removal of requirement of identifying “Promoter(s) / Promoter group”* - Since this concept is unique to India, the Committee proposes to remove this requirement from the rules applicable to companies incorporated outside India listing on Indian exchanges.
- *Operational procedures*
- *Permissible methods in case of Buyback and Delisting*

III. INVESTOR KYC

- 3.15 To subscribe to securities of companies incorporated outside India listed in India, the investor will have to comply with the prevalent Indian KYC and Beneficial Ownership norms.

IV. TAX RELATED CONSIDERATIONS

- 3.16 *Issuance of equity shares of company incorporated outside India on a recognized stock exchange in India*

- i. Under current tax laws in India, if the value at which the shares are issued is less than the value as per Rule 11UA of the IT Rules, tax under Section 56(2)(x) of the IT Act may be attracted on the recipient of the shares (being a tax resident of India).
- ii. While issue of shares by a company incorporated outside India listed on an Indian Stock Exchange is covered under the definition of a “quoted share” being shares listed on a “recognised stock exchange in India”, the Committee recommends that the matter may be taken up with the Department of Revenue to take necessary steps for clarifying the determination of the FMV in such cases.

3.17 *Exclusion from applicability of place of effective management (POEM)*

The Committee recommends that Department of Revenue may be requested to clarify that the POEM provisions will not apply to a company incorporated outside India solely on account of it being listed in India. This is to avoid any undue instance of tax on companies incorporated outside India intending to list in India.

CHAPTER 4 - RECOMMENDATIONS

The major recommendations of the Committee are listed below.

A. Listing of equity shares of companies incorporated in India on foreign stock exchanges

- i. *Listing may be allowed only on specified stock exchanges in Permissible Jurisdictions. Detailed criteria for identifying Permissible Jurisdictions have been suggested. Based on the criteria, the initial list of Permissible Jurisdictions along with specified stock exchanges has also been recommended.*
- ii. *The RBI may be requested to introduce Part B to Schedule 1 to FEMA 20R that may set out the regulatory framework for purchase by a person resident outside India of equity shares of a company incorporated in India listed on a foreign stock exchange. A draft of such Part B to Schedule 1 has also been suggested.*
- iii. *The MCA may be requested to issue a clarification (similar to the general circular dated August 03, 2016 issued for masala bonds) that Chapter III of the Companies Act, 2013 shall not apply to the listing of equity shares of companies incorporated in India on foreign stock exchanges.*
- iv. *Listing of unlisted companies incorporated in India on foreign stock exchanges would be governed by the listing framework of the concerned Permissible Jurisdiction. The relevant Indian laws like Companies Act would also continue to apply to such companies. As regards listing of a listed Indian company on foreign stock exchanges, such a company shall comply, at all times, with rules/ regulations/ laws/ initial and continuous listing/ disclosure requirements, as are applicable to companies listed in India. In case of variation in the compliance obligations/ requirement for additional compliances in Permissible Jurisdiction, a comparative analysis of the provisions that are applicable in India along with compliance of the same and the requirements applicable in the Permissible Jurisdiction shall be given by the company.*
- v. *The KYC and AML framework existing in Permissible Jurisdictions may be taken as acceptable standards for compliance with KYC and AML norms.*
- vi. *The beneficial ownership requirement, provided under the Companies (Significant Beneficial Owners) Rules, 2018, can be met by submitting the information as provided by the investors in the manner prescribed in the Permissible Jurisdictions.*
- vii. *The matter relating to tax on issuance and transfer of equity shares of companies incorporated in India listed on a foreign stock exchange and related reporting obligations, may be taken up with the Department of Revenue for providing clarity. For this purpose, reference may be drawn to ADR / GDR regime.*
- viii. *The Department of Revenue may be requested to take necessary steps for clarifying the applicability of section 56 of the Income Tax Act, 1961 in case of transactions pertaining to listing of equity shares of companies incorporated in India on foreign stock exchanges including relevant amendments in the tax valuation rules.*
- ix. *The relevant accounting standards of the country of listing should be applicable. The accounting standards in the country of listing may require preparation/presentation of consolidated financial statements either in accordance with accounting/auditing standards applicable to domestic companies in such jurisdiction or comparable global standards. However, the company would be required to prepare its consolidated financial*

statements in accordance with applicable Indian Accounting Standards, as applicable from time to time for statutory reporting purposes.

B. Listing of equity shares of companies incorporated outside India on Indian Stock Exchanges

- i. The company incorporated outside India should have been incorporated only in Permissible Jurisdictions. Detailed criteria for identifying Permissible Jurisdictions have been suggested. Based on the criteria, the initial list of Permissible Jurisdictions along with the Indian stock exchanges for listing has also been recommended.*
- ii. RBI may be requested to amend the Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004 to (i) specifically permit investments by resident Indians in securities of companies incorporated outside India listed on Indian stock exchanges, and (ii) enable resident Indians to transfer securities of companies incorporated outside India listed on Indian stock exchanges.*
- iii. RBI may be requested to amend the Foreign Exchange Management (Deposit) Regulations, 2016 to enable companies incorporated outside India to open bank accounts in India denominated in Indian rupees for listing purposes and transactions related thereto.*
- iv. MCA may be requested to introduce a provision similar to section 390 of the Companies Act enabling SEBI to make regulations to permit listing of equity shares of companies incorporated outside India on Indian stock exchanges.*
- v. SEBI (ICDR) Regulations may be suitably amended to provide a framework for enabling listing of equity shares of companies incorporated outside India on Indian stock exchanges. The following may be a few key areas of the said enabling framework:*
 - a. Company-specific eligibility criteria*
 - b. Removal of requirement of identifying “Promoter(s)/ Promoter group”*
 - c. Financial statement requirements*
 - d. Issue size and minimum float*
- vi. SEBI (LODR) Regulations may be suitably amended to introduce a framework similar to the existing framework for IDRs, which, to begin with, may be made applicable mutatis mutandis in this case. Unlisted companies incorporated outside India, intending to list in India, shall be required to ensure compliance with the Indian framework with respect to continuous listing, with suitable amendments as proposed in case of initial listing. Further, recommendations have also been made relating to financial statements and few other issues.*
- vii. SEBI (PIT) Regulations, SEBI (SAST) Regulations, SEBI (Buy-back) Regulations and SEBI (Delisting) Regulations may be suitably amended to extend the applicability of the existing regulations to companies incorporated outside India listing on Indian stock exchanges. If the company incorporated outside India is already listed in its country of incorporation, the regulatory requirements applicable in such country shall also apply. The following may be the key areas of amendments:*
 - a. Definition of company*

- b. *Removal of requirement of identifying “Promoter(s)/ Promoter group”*
 - c. *Operational procedures*
 - d. *Possible methods in case of buy-back and delisting*
- viii. *Department of Revenue may be requested to take necessary steps for clarifying the determination of Fair Market Value in the context of rule 11UA of the Income Tax Rules, 1962 and section 56 of the Income Tax Act, 1961*
- ix. *The Department of Revenue may be requested to clarify that the Place of Effective Management (POEM) provisions will not apply to a company incorporated outside India solely on account of it being listed in India.*

List of Permissible Jurisdictions and Specified Stock Exchanges

1. United States of America – NASDAQ, NYSE
2. China – Shanghai Stock Exchange, Shenzhen Stock Exchange
3. Japan – Tokyo Stock Exchange, Osaka Securities Exchange
4. South Korea – Korea Exchange Inc.
5. United Kingdom – London Stock Exchange
6. Hong Kong – Hong Kong Stock Exchange
7. France – Euronext Paris
8. Germany – Frankfurt Stock Exchange
9. Canada – Toronto Stock Exchange
10. Switzerland – SIX Swiss Exchange

SCHEDULE 1

[See Regulation 5(1)]

Part A - Purchase / Sale of capital instruments of a company incorporated in India by a person resident outside India

[As existing in FEMA 20R]

Part B - Purchase / Sale of capital instruments of company incorporated in India listed on a recognised stock exchange outside India

I. PURCHASE / SALE OF CAPITAL INSTRUMENTS ON A RECOGNISED STOCK EXCHANGE OUTSIDE INDIA

- 1.1 A person resident outside India (other than a citizen of Pakistan or Bangladesh or an entity incorporated in Pakistan or Bangladesh) may purchase or sell capital instruments of a company incorporated in India listed on a recognised stock exchange outside India, subject to prohibited activities, entry routes, sectoral caps and attendant conditions specified in Regulation 15 and Regulation 16.
- 1.2 The aggregate of capital instruments which may be issued or transferred to persons resident outside India on a recognised stock exchange outside India, along with capital instruments already held by persons resident outside India, shall not exceed the limit on foreign holding of such capital instruments under the Act, rules or regulations framed thereunder.
- 1.3 It is clarified that:
- i. “Foreign Direct Investment” as defined under Regulation 2(xvii) shall include investment through capital instruments by a person resident outside India in a company incorporated in India listed on a recognised stock exchange outside India;
 - ii. Any transfer of capital instruments of a company incorporated in India on a recognised stock exchange outside India shall be considered to be a transfer of capital instruments from a person resident outside to a person resident outside India for the purpose of Regulation 10;
 - iii. The pricing guidelines under Regulation 11 shall not apply to the purchase / sale of capital instruments of a company incorporated in India on a recognised stock exchange outside India; and
 - iv. “Recognised stock exchange outside India” shall mean specified stock exchanges in Permissible Jurisdictions and as notified from time to time.

II. MODE OF PAYMENT

The amount of consideration for purchase / sale of capital instruments of a company incorporated in India on a recognised stock exchange outside India shall be paid through banking channels to the foreign currency account of the Indian company held in accordance with the Foreign Exchange Management (Foreign currency accounts by a person resident in India) Regulations, 2016.

III. PROCEEDS OF ISSUE

The proceeds of issue of capital instruments by a company incorporated in India on a recognised stock exchange outside India shall either be remitted to a bank account in India or deposited in a foreign currency account of the Indian company held in accordance with the Foreign Exchange Management (Foreign currency accounts by a person resident in India) Regulations, 2016.¹

IV. REPORTING REQUIREMENTS

- 4.1 The reporting requirements under Regulation 13 as relevant shall apply to the issue and sale and purchase of capital instruments of a company incorporated in India on a recognised stock exchange outside India.
- 4.2 The Reserve Bank shall have the right to require submission from time to time of details in relation to persons resident outside India who are shareholders of a company incorporated in India listed on a recognised stock exchange outside.

¹ Regulation 5(F)(1) of the Foreign Exchange Management (Foreign currency accounts by a person resident in India) Regulations, 2016 to be amended as follows: “Subject to compliance with the conditions in regard to raising of external commercial borrowings (ECB) or raising of resources through American Depository Receipts (ADRs) or Global Depository Receipts (GDRs) *or issue of capital instruments to persons resident outside India on a recognised stock exchange outside India*, the funds so raised may, pending their utilization or repatriation to India, be held in deposits in foreign currency accounts with a bank outside India.”

List of Permissible Jurisdictions

1. United States of America
2. China
3. Japan
4. South Korea
5. United Kingdom
6. Hong Kong
7. France
8. Germany
9. Canada
10. Switzerland

List of Indian Stock Exchanges

1. National Stock Exchange of India Limited
2. Bombay Stock Exchange Limited
3. Metropolitan Stock Exchange of India Limited
4. Stock Exchanges in GIFT-IFSC
