



## **A GIANT LEAP FOR UNLISTED COMPANIES IN INDIA**

Section 23 of the Companies Act, 2013 (the Act) inter alia provides power to the Central Government to notify such class of public companies to issue such class of securities for purposes of listing in the permitted stock exchanges in permissible foreign jurisdictions.

The Ministry of Finance, Department of Economic Affairs, Government of India (GOI) issued a Notification dated 24<sup>th</sup> January, 2024 to permit listed / unlisted public companies to issue and list their equity shares in the International Exchanges (IE) and also to enable the existing equity shareholders to offer their shares on IE. The said Notification amends the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 (NDI Rules). Correspondingly, on the same day, the Ministry of Corporate Affairs (MCA), GOI has also notified under Section 469 read with Section 23(3) of the Act, the Companies (Listing of Equity Shares in Permissible Jurisdictions) Rules, 2024 (LEAP Rules) on the same date. Both the above Notifications enable unlisted public companies as well as listed entities to List of Equity Shares in Permitted Jurisdictions (LEAP). Never before companies in India were allowed to issue or list their equity shares in a foreign jurisdiction. This write-up provides a brief summary of the law governing LEAP under the said Notifications.

By virtue of the said Notifications, public companies in India (listed and unlisted) can now (i) Issue and list equity shares in IE, (ii) to enable existing shareholders of such companies to offer for sale of existing equity shares on the IE. The unlisted public companies are required to follow the procedure for issue / offer of equity shares as per the Companies (Listing of Equity Shares in Permissible Jurisdictions) Rules, 2024 (LEAP Rules) and the listed entities are required to follow the Regulations / Directions of Securities and Exchange Board of India (SEBI).

IE means India International Exchange and NSE International Exchange set up within the jurisdiction of International Financial Services Centre in India established in the Gujarat International Finance Tec-city, Gujarat (GIFT City).

The issue of equity shares / offer of existing shares is subject to conditions like the business of the company concerned should not be in FDI prohibited sectors, the issue / offer is subject to sectoral caps for FDI in terms of Schedule I of the NDI Rules. The equity shares issued / offered shall be in dematerialised mode and shall rank pari-passu with the equity shares listed in the recognised stock exchanges in India. If the existing equity shareholder is a resident of a country with which India shares its land borders, then sale / purchase of such shares shall be subject of approval of GOI.

### **Eligibility of public companies to LEAP:**

A public company shall be eligible to issue equity shares and / or the existing equity shareholders of a public company can offer shares, through IE, if-



- (a) the public 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 (the Act);
- (e) none of its promoters or directors is a fugitive economic offender.

**Ineligible public companies to LEAP:**

The following unlisted public companies are ineligible to LEAP —

- (a) A company registered under section 8 or declared as Nidhi under section 406 of the Act;
- (b) A company limited by guarantee and also having share capital;
- (c) A company having any outstanding deposits accepted from the public as per Chapter V of the Act and rules made thereunder;
- (d) A company with a negative net worth;
- (e) A company which has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holder or any other secured creditor, unless two years have lapsed since remedying such default;
- (f) A company which has made any application for winding-up under the Act or for resolution or winding-up under the Insolvency and Bankruptcy Code, 2016 and in case any proceedings against the company for winding-up under the Act or for resolution or winding-up under the said Code is pending;
- (g) A company which has defaulted in filing of an annual return under section 92 or financial statement under section 137 of the Act within the specified period.

**Other conditions to be complied by issuer public companies:**

- (a) The public company shall ensure compliance with all the extant laws relating to issuance of equity shares including regulations applicable for issue of securities through Indian depositories and foreign depositories.
- (b) The public companies having their equity shares listed on IE shall ensure that the voting rights on such equity shares shall be exercised directly by the existing holder or through their custodian.
- (c) The price at which equity shares are offered through IE shall not be less than the price applicable to a corresponding mode of issuance of such equity shares to domestic investors under the applicable laws.
- (d) In the case of initial listing of equity shares by a public unlisted company on the IE, the price of issue or transfer of equity shares shall be determined by a book- building process as permitted by the said IE and shall be further subject to pricing regulations under the Foreign Exchange Management Act, 1999.



- (e) Unlisted public companies are required to file a prospectus in e-form LEAP-1 with seven days of filing the same with the IE.
- (f) Unlisted public companies are required to comply with Indian Accounting Standards in preparation of their financial statements, in addition to any other accounting standard, which they may be required to comply for the preparation of the financial statements to be filed with regulators, if any.

The said Notifications and amendments present a significant shift in the regulatory landscape. It provides to unlock the values of unlisted public companies and global investors are provided a platform for trading in the shares of such companies. The amendments will further boost FDI into Indian public companies.

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