Precursor
The Analysed Update…

PANTOMATH ADVISORY SERVICES

Unlisted Companies Permitted to Raise Funds Abroad

The Macro Context

The GoI and RBI had implemented a slew of measures, especially in last 3 months, to contain CAD and protect falling rupee. Such measures included curb on gold imports, foreign exchange controls for outbound investments and eased inbound investment norms for a host of sectors such as telecom and high-tech defense.

In order to further boost capital inflows, GoI has now permitted unlisted Indian companies to raise funds overseas through issue of depository receipts (ADRs/GDRs), which route was hitherto prohibited for unlisted companies.

This is a major policy move by GoI and aims to provide broad-based avenues for Indian companies to raise equity capital globally and thus open up new channel of foreign exchange inflows to the country.

The Corporate Context

Raising of funds in global markets widens the funding avenues for an Indian corporate, which many a times find it difficult raising capital domestically, particularly in times of distress and economic downturn. Until the year 2005, Indian unlisted companies were permitted to issue ADRs / GDRs abroad. However, on August 31, 2005, GoI amended the norms requiring companies to ensure prior or simultaneous listing on Indian bourses for tapping overseas markets through issuance of ADRs / GDRs.

A few unlisted companies did, however, raise foreign capital without domestic listing through innovative structures of externalisation, ie. structuring themselves as a subsidiary to overseas holding company. (For instance, MakeMyTrip raised $70 million by pricing 5 million shares for $14 each in 2010 through this route. Its shares got listed on NASDAQ)

The point is, there is a need felt by Indian companies for having access to global markets, without requiring them to necessarily list domestically.

Amounts raised through ADRs/GDRs since 2004-2005

Year	Amt raised (USD mio)
2012-13	187
2011-12	597
2010-11	2,049
2009-10	3,328
2008-09	1,162
2007-08	6,645
2006-07	3,776
2005-06	2,552
2004-05	613

Source: RBI

The Regulatory Context

On August 31, 2005, GoI amended the Scheme prohibiting Indian unlisted companies to issue ADRs / GDRs abroad without securing prior or simultaneous listing of equity shares in India.

As per press release date September 27, 2013 the above amendment will now be rolled back and the earlier position restored once necessary notifications are issue by the MoF, DIPP and RBI in the due course.

With the above, Indian companies can issue ADRs / GDRs abroad without being subject to the mandatory requirement of prior or simultaneous domestic listing, subject to adhering to the specified norms which are briefed in the adjacent table. However, the move is only on pilot basis of 2 years and the same will be reviewed thereafter.

New Norms
• Indian company need not be listed on Indian Stock Exchange • Listing abroad should be on IOSCO / FATF compliant exchanges or with those with whom SEBI has bilateral agreement • FDI Policy and relevant disclosure norms of SEBI shall be complied with. • Proceeds raised may be used for retiring outstanding overseas debt or for operations abroad including for acquisitions. • If proceeds raised overseas are not utilized within 15 days, the same shall be remitted to India.

Glossary

ADR	American Depository Receipts
CAD	Current Account Deficit
DIPP	Department of Industrial Policy and Promotion
FATF	Financial Action Task Force
FDI	Foreign Direct Investment
GDR	Global Depository Receipts
GoI	Government of India
IOSCO	International Organization of Securities Commissions
MoF	Ministry of Finance
NASDAQ	National Association of Securities Dealers Automated Quotation System
RBI	Reserve Bank of India
Scheme	Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depositary Receipt Mechanism) Scheme, 1993
SEBI	Securities and Exchange Board of India

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