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LAW & POLICY UPDATE

CORPORATE & COMMERCIAL

Direct overseas listing by Indian companies

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On May 17, 2020, Ministry of Finance, Government of India (**MoF**) announced that Indian companies would now be allowed to list their shares directly in foreign stock exchanges. While consequent amendments and clarifications in legal and regulatory regime are awaited, the move would now allow Indian companies access to multiple jurisdictions for raising capital, with differing costs and listing conditions. At present, direct listing of Indian companies shares on foreign bourses is not permitted and possible options to raise capital from listed options were restricted to American Depository Receipts (**ADRs**) and Global Depository Receipts (**GDRs**) which were increasingly becoming less popular with the Indian corporates. Government of India and Securities and Exchange Board of India (**SEBI**) have been exploring options so that Indian corporates could access a larger pool of foreign capital.

Policy shift towards direct listing of shares abroad stems from report of a Committee constituted by SEBI in 2018 for listing of equity shares of companies incorporated in India on foreign stock exchanges and of companies incorporated outside India on Indian stock exchanges (**Committee Report**), which had recommended permissible jurisdictions for listing of equity shares of an Indian company based on following principles:

- Countries which are a member of 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
- Countries which are members of the Financial Action Task Force (**FATF**)
- Countries not identified in the public statement of the FATF as:
  - A jurisdiction having strategic anti-money laundering or combating the financing of terrorism deficiencies to which countermeasures apply
  - 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
  - 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

The criteria for listing in permissible jurisdictions are akin to those of the listing of rupee denominated bonds (commonly referred as '**Masala Bonds**') in foreign exchanges which were introduced in past by Reserve Bank of India. An initial list of 10 jurisdictions were identified as permissible jurisdictions in Committee Report which included United States, China, Japan, South Korea, United Kingdom, Hong Kong, France, Germany, Canada and Switzerland.

While this is a welcome move, actual implementation of the policy would require amendment to several regulations including Foreign Exchange Management (Non-debt Instruments) Rules, 2019; Companies Act, 2013 including rules thereunder; and SEBI regulations related to listing and disclosures, in addition amendment in taxation laws.