

MINISTRY OF FINANCE

(Department Of Economic Affairs)

S.O. 332(E).—In exercise of the powers conferred by clauses (aa) and (ab) of sub-section (2) of section 46 of the Foreign Exchange Management Act, 1999 (42 of 1999) read with sub-section (3) of section 23 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, namely:-

1. Short title and commencement. — (1) These rules may be called the Foreign Exchange Management (Non-debt Instruments) Amendment Rules, 2024.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 (hereinafter referred to as the principal rules), in rule 2-

(i) after clause (aa), the following clause shall be inserted, namely:-

‘(aaa) “International Exchange” shall mean permitted stock exchange in permissible jurisdictions which are listed at Schedule XI annexed to these rules;’;

(ii) for clause (ag), the following clause shall be substituted, namely:-

‘(ag) “listed Indian company” means an Indian company which has any of its equity instruments or debt instruments listed on a recognised stock exchange in India and on an International Exchange and the expression “unlisted Indian company” shall be construed accordingly;’;

(iii) after clause (ak), the following clause shall be inserted, namely:-

‘(aka) “permissible jurisdiction” means such jurisdiction as notified by the Central Government under sub-clause (f) of sub-rule (3) of rule 9 of Prevention of Money-laundering (Maintenance of Records) Rules, 2005;’;

3. In the principal rules, after Chapter IX, the following Chapter shall be inserted, namely:-

‘CHAPTER X

INVESTMENT BY PERMISSIBLE HOLDER IN EQUITY SHARES OF PUBLIC COMPANIES INCORPORATED IN INDIA AND LISTED ON INTERNATIONAL EXCHANGES

34. Investment by permissible holder .- (1) A permissible holder may purchase or sell equity shares of a public

Indian company which is listed or to be listed on an International Exchange under Direct Listing of Equity Shares of Companies Incorporated in India on International Exchanges Scheme as specified in Schedule XI.

(2) The mode of payment and other attendant conditions for remittance of proceeds of issue shall be as specified by the Reserve Bank.’.

4. In the principal rules, after the Schedule X, the following Schedule shall be inserted, namely:-

‘SCHEDULE XI

Direct Listing of Equity Shares of Companies Incorporated in India on International Exchanges Scheme

1. Issue and Listing on International Exchanges .- A public Indian company may issue equity shares or offer equity shares of existing shareholders, subject to the following conditions, namely:-

(i) such issue or offer of equity shares of existing shareholders shall be permitted and such shares shall be listed on any of the specified International Exchange.

- (ii) such issue or offer of equity shares of existing shareholders shall be subject to prohibited activities, and sectoral caps prescribed in paragraph 2 and 3 of Schedule I to these rules;
- (iii) such equity shares to be issued by the public Indian company or offered by its existing shareholders on an International Exchange shall be in dematerialised form and rank pari passu with equity shares listed on a recognised stock exchange in India:

Provided that the prior Government approval, wherever applicable, shall be obtained.

2. Permissible holder .- (a) permissible holder means a holder of equity shares of the Company which are listed on International Exchange, including its beneficial owner:

Provided that such a holder who is a citizen of a country which shares land border with India, or an entity incorporated in such a country, or an entity whose beneficial owner is from such a country, shall hold equity shares of such public Indian company only with the approval of the Central Government.

Explanation 1.- For the purposes of this clause, permissible holder is not a person resident in India.

Explanation 2.- The permissible holder, including its beneficial owner, shall be responsible for ensuring compliance with this requirement. The public Indian company, in its offer document, by whatever name called in the permissible jurisdiction, shall make a disclosure to this effect.

(b) a permissible holder may purchase or sell equity shares of an Indian company listed on an international exchange subject to limit specified for foreign portfolio investment under these rules.

3. Eligibility .- (1) (I) a public Indian company may issue equity shares on International Exchange; or

(II) the existing shareholders may offer equity shares in such exchange, subject to compliance with the following conditions and other requirements as laid down in this Scheme:

(i) 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.

(ii) Existing holders of the public Indian company shall be eligible to offer shares, if-

(a) the public Indian company or the holder offering equity shares 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, listed or otherwise, which is debarred from accessing the capital market by the appropriate regulator;

(c) the public Indian company or the holder offering equity shares 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 the promoters or directors of the public Indian company or the holder offering equity shares is a fugitive economic offender.

(2) (I) a listed Indian company may issue equity shares on International Exchange; or

(II) the existing share holders may offer equity shares in such exchange,

subject to compliance with the conditions and other requirements as per the norms notified by the Securities and Exchange Board of India from time to time.

(3) (I) a public unlisted Indian company may issue equity shares on International Exchange; or

(II) the existing share holders may offer equity shares in such exchange,

subject to compliance with the conditions and other requirements as per the norms notified by the Ministry of Corporate Affairs from time to time.

Explanation.-The restrictions mentioned at items (a) and (b) of sub-clause (i) of clauses (I) and (II) of sub-paragraph (1) of paragraph 3 and items (a) and (b) of sub-clause (ii) of clauses (I) and (II) of sub-paragraph (1) of paragraph 3 shall not apply to the persons or entities mentioned therein, who were debarred in the past by the Government or the appropriate regulator and the period of debarment is already over as on the date of listing of its equity shares on the International Exchange(s).

4. Obligations of companies .- (1) The public Indian company shall ensure compliance with extant laws relating to

issuance of equity shares, including requirements prescribed in this Scheme, the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Depositories Act, 1996 (22 of 1996), the Foreign Exchange Management Act, 1999 (42 of 1999), the Prevention of Money-laundering Act, 2002 (15 of 2003) or the Companies Act, 2013 (18 of 2013) and rules and regulations made thereunder, as applicable. For this purpose, the said public Indian company may also enter into necessary arrangements with Indian Depository and Foreign Depository.

(2) The public Indian company shall ensure that the aggregate of equity shares which may be issued or offered in a permissible jurisdiction, along with equity shares already held in India by persons resident outside India, shall not exceed the limit on foreign holding under the Schedule I to these rules.

5. Voting rights .- The public Indian companies having their equity shares listed on International Exchange shall ensure that the voting rights on such equity shares shall be exercised directly by the permissible holder or through their custodian pursuant to voting instruction only from such permissible holder.

6. Pricing .- (1) Where equity shares are issued by a listed company or offered by the existing shareholders of equity shares listed on Recognised Stock Exchange in India, the same shall be issued at a price, not less than the price applicable to a corresponding mode of issuance of such equity shares to domestic investors under the applicable laws.

(2) In case of initial listing of equity shares by a public unlisted Indian company on the International Exchange, the price of issue or transfer of equity shares shall be determined by a book- building process as permitted by the said International Exchange and shall not be less than the fair market value under applicable rules or regulations under the Foreign Exchange Management Act, 1999 (42 of 1999):

Provided that subsequent issuance or transfer of shares for the purpose of listing additional shares post initial listing would be based on applicable pricing norms of the International Exchange and the permissible jurisdiction.

Explanation.- For the purposes of this Scheme-

(a) "appropriate regulator" means any financial sector regulator or Government Ministry or

Department administering Acts applicable to the company, listed or unlisted;

(b) “beneficial owner” shall have the same meaning as provided in proviso to sub-rule (1) of rule 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005;

(c) “foreign depository” means a corporate entity registered and regulated in a permissible jurisdiction for the purpose of –

(i) holding securities and maintaining securities accounts for beneficial owners in an electronic manner; and

(ii) managing rights or interests in securities resulting from the credit of securities to a securities account.

Explanation.-For the purposes of this clause “foreign depository” includes Central Securities Depositories and International Central Securities Depositories.

(d) “fugitive economic offender” shall have the same meaning as assigned to it under clause (f) of sub-section (1) of section 2 of the Fugitive Economic Offenders Act, 2018 (17 of 2018);

(e) “Indian depository” means a depository as defined in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996 (22 of 1996);

(f) “offer by existing holders of equity shares” means offer of existing equity shares of the company pursuant to formal agreement among the company, the Indian Depository and the Foreign depository;

(g) “offer document” means a prospectus, red herring prospectus, or shelf prospectus, as applicable, as referred to in clause (70) of section 2 of the Companies Act, 2013 (18 of 2013), in case of a public issue, and a letter of offer in case of a rights issue;

(h) “wilful defaulter” means a person who is categorised as a wilful defaulter by any bank or financial institution or consortium thereof, in accordance with the guidelines on wilful defaulters issued by the Reserve Bank of India.

Annexure

List of International Exchanges

1. International Financial Services Centre in India- India International Exchange, NSE International Exchange.’.

Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii),

vide number S.O.3732 (E), dated the 17th October, 2019 and subsequently amended vide notification numbers: -

(i) S.O. 4355 (E), dated the 5th December 2019;

(ii) S.O. 1278 (E), dated the 22nd April, 2020;

(iii) S.O. 1374 (E), dated the 27th April, 2020;

(iv) S.O. 2442 (E), dated the 27th July, 2020;

(v) S.O. 4441 (E), dated the 8th December, 2020;

(vi) S.O. 3206 (E), dated the 9th August, 2021;

(vii) S.O. 3411 (E), dated the 19th August, 2021;

(viii) S.O. 4091 (E), dated the 5th October 2021;

(ix) S.O. 4242 (E), dated the 12th October 2021; and

(x) S.O. 1202 (E), dated 12th April 2022.