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THE WORLD MAY TURN FLAT FOR INDIAN COMPANIES, THANKS TO SEBI PANEL

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The world is flat is an international best-seller by three-time Pulitzer Prize winner Thomas Friedman. The title of the 2005 book was a smart take on the concept that the world should be a level-playing field, with all companies getting equal opportunity.

Taking a cue from this, perhaps, a panel of experts appointed by the Securities and Exchange Board of India (SEBI), in their own little way, tried to 'make the world flat' for Indian and overseas companies, last week.

The panel recommended that unlisted Indian companies should be allowed to do direct equity listing in select overseas markets and that companies from such jurisdictions should also be allowed to list their shares on Indian bourses. To be sure, this is just a recommendation.

The board of the capital markets regulator, which has representations from the Reserve Bank of India (RBI) and the government, could deliberate on this before giving the proposals a final shape.

The importance of the recommendations, however, cannot be disputed. Current regulations bar unlisted Indian companies to list their shares overseas, though such entities could list their depository receipts, which many companies have done.

Also, overseas companies can currently list here only by way of issuing Indian Depository Receipts (IDRs), a framework that has proved to be a non-starter with just one issuance in 2010 of Standard Chartered Plc.

Interestingly, the panel has been quite pragmatic in their approach and has tried to create a framework keeping the current regulatory system in sight.

"One good thing about the report is that it is in a plug-and-play format," said a person familiar with the committee's deliberations.

"The regulatory framework has been designed keeping in mind the current framework. More importantly, the changes that are required can be done by way of a notification or circular by other regulators or policymakers. There is no amendment required to any of the laws, which would have made this whole exercise a very time-consuming one," the person, who wished not to be named, said.

Amendments needed

While the committee has put forth its set of recommendations, the listing framework would only be possible after amendments to two key laws — Foreign Exchange Management Act (FEMA) and Companies Act. "Such a step of allowing unlisted Indian firms qualifying the criteria for listing their equity overseas is a welcome move," said Daizy Chawla, senior partner, Singh & Associates, a law firm.

"With respect to the amendment to FEMA, the same can be done through issuing a circular by RBI. As far as the amendment in Companies Act is concerned, the same will also not be a problem considering that in 2016 with respect to Masala Bonds, the same was done by issuing a circular," Mr. Chawla added.

The SEBI panel has been quite choosy in terms of the countries and the exchanges that have been included as 'Permissible Jurisdictions,' where unlisted Indian companies can do a direct equity listing.

While the starting point was IOSCO - International Organization of Securities Commissions – signatories, the SEBI panel only chose those jurisdictions that are part of the IOSCO board and not just ordinary members of the global body.

The permissible jurisdictions have been identified as U.S., China, Japan, United Kingdom, Hong Kong, South Korea, France, Germany, Canada and Switzerland. Thereafter, the exchanges were zeroed in on the basis of liquidity by referring to the data from the World Federation of Exchanges (WFE).

Mona Bhide, managing partner, Dave & Girish & Co., believes that while the recommendation is an essential step to take India ahead as a player in the global securities market, the path does have certain legal issues that need to be addressed carefully.

"Changes to existing statutes can be done only by passing a law that amends the existing law at Parliament level and that would require time.

"However, relaxation to existing FEMA guidelines can be made by RBI. We also need to bear in mind that FEMA has already prescribed sectoral limits to foreign investments.

"So, the new guidelines will need to provide that the total foreign investments in an Indian company should not exceed the existing prescribed limits," explained Ms. Bhide.

In 2014, the almost $22-billion public issue of Chinese major Alibaba on the New York Stock Exchange (NYSE) was the largest such offering in U.S. history. Further, MakeMyTrip formed a company overseas to make it easier to list on NASDAQ.

Incidentally, the SEBI panel is of the view that such listing, if allowed, would benefit companies in the form of alternative source of capital, broader investor base and better valuation along with other strategic benefits.

While recommending to allow allowing overseas companies to list in India, the committee felt that Indian investors could benefit from enhanced diversification of portfolios and participation in the wealth created by global companies.

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