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OFFER FOR SALE

8.1 Introduction

This is one of the ways in which an existing unlisted company can get listed. An offer for sale is an issue of existing securities held by the existing shareholders of the company to the public. Compared to a public issue or an IPO where the proceeds of the issue flow to the company, in case of an offer for sale, the proceeds flow to the shareholders who are offering the shares. In case of an offer for sale, there is no fresh issue of shares since the shareholders are selling their existing shares. Recently there have been several joint issues of initial public offers-cum-offer for sales, e.g., Tata Consultancy Services, Patni Computer Services, HT Media, Suzlon Energy, etc. There would be a fresh issue of shares to the extent of the public issue by the company and to the extent of the offer for sale. In these joint issues, to the extent of the fresh issue of shares by the company, the proceeds would go to the company and to the extent of the offer for sale to the public by the existing shareholders of their existing shares the sale proceeds would go to the shareholders. An offer for sale is often resorted to by private equity investors/venture capital funds, etc., which have invested when the company was unlisted and who now want an exit route. Sometimes the promoters of the company may also offload some of their shares by this mechanism.

8.2 Companies Act

Since in case of an offer for sale no fresh shares are issued, the provisions of the Companies Act which are applicable in the case of an issue of capital would not apply.

8.3 SEBI Guidelines

An offer for sale is made by through an offer document. The offer can be made by the book building route. Thus, it resembles a public issue in all aspects except for the fact that it is not the company but its shareholders which are offering the securities and receiving the consideration. The important provisions of the SEBI Guidelines in this respect are as follows:

- (a) The SEBI DIP Guidelines apply to offers for sale.
- (b) An offer for sale must comply with the eligibility conditions specified for an initial public offer and laid down in para 2.3 above.
- (c) Pricing of the offer for sale is free and as per the company's discretion.
- (d) The promoters' shareholding after the offer for sale must not be less than 20% of the post-issue capital.
- (e) Under the SEBI Guidelines, the pre-IPO capital of an unlisted company is locked-in for a period of one year from the date of allotment. However, this lock-in does not apply in case the pre-IPO capital is held at least for one year at the time of filing of the draft offer document with SEBI and is being offered to the public by way of an offer for sale.

8.4 FEMA

An offer for sale by a non-resident shareholder / promoter would be treated as a sale of shares by non-resident to a resident under the FEMA Regulations. Such a transfer would be on the automatic route of the FIPB and the RBI subject to the pricing guidelines and other documentation requirements specified in the Regulations (see Chapter 19).