Some critical issues about the effects of stand-alone overseas listing of domestic companies are an outflow of domestic wealth overseas, flight of intellectual property rights, control, management and ownership of data.

Leading investors including Tiger Global, Sequoia Capital and Lightspeed and startups have called on India's Prime Minister Narendra Modi urging the government to allow direct overseas listing of Indian companies. Until 2019, a direct listing of the equity shares capital of companies incorporated in India was not permitted on foreign exchanges and vice versa. Then in September 2020, the GOI passed an enabling law that allowed direct overseas listing in select foreign jurisdictions.

The Act provided for amendment in Section 23[3], Companies Act, 2013 which provides for 'Public Offer and Private Placement.' This amendment paved the course for fewer regulations regarding direct overseas listing for Indian companies, and to a large extent, it had been successful in doing so, but at the same time, the Government or SEBI did not exempt companies from any kind of regulation as it would then facilitate money laundering through a direct listing. Section 23 (3) (inserted through amendment) under the Act states that public companies may issue such classes of securities to be listed on permitted stock exchanges in 'permissible foreign jurisdiction' meaning those that have treaty obligations to share information and cooperate with Indian authorities in the event of any investigation. But there are still some issues to be sorted out and the government is yet to release the final blueprint of the new regulations on exchange control laws, taxation, and other aspects. There are now reports that India would take around six months to announce rules related to taxation.

In order to speed up the process a group of 22 investors and startups in a letter to the PM dated July 29, 2021, stated, "Even as some companies are gearing up to list in India, many others are keen to evaluate the option of an international listing," emphasizing that companies in other markets like the United States have a much bigger market capitalization than in India. "If India wants to produce multinational tech giants, permitting our startups to access global capital by listing on international exchanges is an absolute must-have," says the letter.

Image source: Bloomberg

Access to Foreign Capital Markets – Flawed Rationale:

India is currently the third-largest startup unicorn system. This sector has received several billion dollars of American, Japanese and Chinese investments. The start-up ecosystem, combined with the ability to list in India, has laid the groundwork for massive wealth-creation opportunities, besides livelihood creation. The London Stock Exchange, which is tracking India's policy change closely, has been in talks with several Indian tech firms on overseas listings.

Venture Capitalists make rosy promises to startups to encourage overseas listing. These include easy access to large foreign capital; stable regulation; escape from allegedly cumbersome laws and regulations; avoidance of Indian capital gains tax; and better intellectual property protection, control and evaluation, level playing field and brand building. Overseas listing negatively affects sovereign interests as it causes an outflow of domestic wealth overseas. There is a potential flight of unicorns, all intellectual property rights, control, management and ownership of data.

Via overseas listing the company, investors, value capture, IP and data are domiciled overseas with little accountability to Indian regulators. Indian customers, workforce, IP and data all contribute to creating wealth overseas.

The domestic listing does not mean only domestic investors; the field is wide open to a large number of foreign portfolio investors (FPIs) registered with SEBI, thereby allowing Global capital to come into Indian companies. Further, the rationale for allowing overseas listing, pertaining to access to Global capital appears to be flawed. In reality, Indian companies have had access to Global capital since 1992 through the overseas listing of Global Depositary Receipts and American Depositary Receipts (GDRs and ADRs). 259 companies such as Infosys, Wipro, ICICI and Reliance, have collectively raised Rs. 1.39 lakh crore.

By dual listing startups also face a higher compliance burden as it means changes in founder compensation, insider trading laws, financial repowering norms, board composition and tax laws. Overseas listing can be discouraged by offering a tax incentive or a 10-year tax holiday for start-ups that remain Indian.

Some investors prefer overseas listing because these companies are substantially outside of Indian jurisdiction or the influence of Indian regulators and are not subject to Indian laws, taxes and government rules. The current inability of unlisted companies to tap the international market is supposedly the reason for the migration of startups outside India. However, India is such a big emerging market that even if the option of the overseas listing is not available to most of these investors would invest in Indian startups as they have done in many Indian domiciled startups.

The assertion that tech companies get better valuation outside India is weak. Increasing maturity in the Indian equity market has increased the appetite for large IPOs. The recent listing by Zomato is a very good example that Indian equity markets are becoming bigger and deeper. Over 33 per cent of anchor investors in the Zomato IPO round were domestic investors and the IPO was oversubscribed 44 times. Zomato is already among the top 50 market cap companies in India. A top stock in the market always gets more intention from investors. If Zomato were to be listed in the US, it would not even be in the top 500 stocks.

Examples of Uber, Slack, Lyft and Smile direct Club have had disappointing listings on the foreign bourses. With a visibility perspective, especially if tech companies started listing in India, most mutual fund houses would actually create a separate scheme for this and the acceptance from retail investors would be very high.

Sequoia Capital, an American foreign venture capital fund active in the Indian start-up market offers some of the largest investments including OYO Rooms, BYJU’s, Ola, Zomato, MobiKwik, Mu Sigma, Unacademy, MoneyTap, Urban Ladder and Grofers. Another US-based seed money startup accelerator is Y Combinator with investment in over 50 Indian start-ups key being SockSoho, OkCredit, Khabri, ClearTax, Meesho and Razorpay. Zodius Capital is an Indian venture capital firm that focuses on investing in India centric businesses. It has investments in Big Basket, AllyGrow Technologies, Zivame, Pepperfry, etc. Nexus Venture Partner is a US-India venture fund started by entrepreneurs in enterprise technology and consumer internet. Some of the major names in which it has investments are Unacademy, WhiteHat Jr., Olx, Zomato, Snapdeal, Map My India etc. US venture capital firm Lightspeed Venture Partners includes BYJU, Acceldata, ITZcash Card, Magicpin, OYO rooms, Udaan etc. in its Indian portfolio.

Businesses made in India have a responsibility towards the country. Internet businesses and e-commerce have millions of Indians as consumers' suppliers which play a very important role in the expansion of market width. Domestic listing helps in expanding the retail investor base and bring in their savings into our highly capital-starved economy. The proactiveness of SEBI, NSE and other government bodies are leading the way with state of art IPO and trading settlement processes and high-volume capability. Our IPO listing time is also very minimal.

Apart from the outflow of domestic wealth overseas, all intellectual property rights; control, management and ownership of data; stock market valuation. Overseas listing includes the risk of losing capital gains tax that would accrue if the PE/VC/founders exited the company and lower corporate taxes depleted by higher royalty payments in the future.

A domestic listing would ensure a wider home brand recognition, allow for research coverage, trading liquidity, ease of investor relations, lower litigation risk and lower listing and ongoing compliance costs.

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