ISSN: 2582 - 2942

LEXFORTI

LEX FORTI

LEGAL JOURNAL

VOL- I ISSUE- III

APRIL 2020

ISSN: 2582 - 2942

DISCLAIMER

ISSN: 2582 - 2942

EDITORIAL BOARD

ISSN: 2582 - 2942

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ISSN: 2582 - 2942

ABOUT US

LexForti is a free open access peer-reviewed journal, which gives insight upon broad and dynamic legal issues. The very objective of the LexForti is to provide open and free access to knowledge to everyone. LexForti is highly committed to helping law students to get their research articles published and an avenue to the aspiring students, teachers and scholars to make a contribution in the legal sphere. LexForti revolves around the firmament of legal issues; consisting of corporate law, family law, contract law, taxation, alternative dispute resolution, IP Laws, Criminal Laws and various other Civil issues.

Changes for the Company Once it is Listed

Shreya Kalyani

INTRODUCTION

Listing refers to the company's shares being on the stock list that are officially traded on the stock exchange. Section 2(52) of the Companies Act, 2013 defines listed company as company which has any of its securities listed on any recognised stock exchange. Initial Public Offering is the very first sale of securities issued by the company to the public. The company invites offers from members of the public to subscribe for shares or debentures through prospectus. Before making the public offering the company shall comply with all the SEBI requirements. The major reason why a company gets listed, is to raise capital. They provide portion of ownership in the company attributed to the shares, in respect of which they get money from the public. This helps the management to arrange large sums of money because valuations are higher in public financing. Investors be it individual or institutional, can benefit by investing their money in the stocks of company and thereby, receive returns in the form of dividend. A listing agreement is executed with the concerned stock exchange (where the securities will be listed) before the issue of prospectus accompanied with listing fee as prescribed by the stock exchange market every financial year.

BENEFIT OF LISTING

Listing of shares comes with an additional benefit of publicity for the company. It helps in building the reputation of the company and it gets better visibility as their names appear in the newspapers, TV channels and Magazines. It becomes convenient to assess the position of the company through their share performance in the market. Listing attracts foreign institutional investors. A listed company is favourably rated by the lenders of capital so they can also borrow from financial institutions easily.[1] It also provides liquidity to the ESOP holding employees.

DISADVANTAGE OF LISTING

There is higher amount of risk when a company goes public such as, a company may be sued for the misrepresentation of the material facts to its shareholders or for depriving the shareholders of the information that was supposed to be disclosed and so does the risk of insider trading. Therefore, there is increase in accountability and responsibility unlike a private company where decisions may be autonomous and internal matters might not be disclosed. Even if it is majority

[1] https://www.bseindia.com/static/about/benefits.aspx

shareholder, he does not acquire exclusive right and full control over the decisions of the company.

The question arises what companies can list its securities. The securities can be listed by any public limited company, Central or State Government, quasi-governmental and other financial institutions/ corporations and municipalities.[2] A private company can be a listed company. It can only list its debt securities on stock exchange and is prohibited to list its shares. Private companies go for listing because it facilitates the goodwill of their company.

There are many governing regulations made for listed companies. In case of a public company desirous of listing its securities on the recognised stock exchange in India, the issue of securities is governed by The Companies Act, 2013; Securities Contracts (Regulation) Act, 1956; Securities Contracts (Regulation) Rules, 1957, SEBI Act, 1992 and Issue of Capital and Disclosure Requirements (Regulations), 2009. Section 24 of the Companies Act empowers the SEBI to regulate matters relating to issue and transfer of securities; and non-payment of dividends by listed companies or those companies which intend to get their securities listed.

A listed company can raise finance apart from the bank loans and can also reduce their debts without being solely dependent upon the banks. Unlisted companies have better control over the decisions and business operations of the company. Listed companies are owned by many shareholders and unlisted company is owned by private investors. Listed companies have to follow SEBI regulations while the unlisted companies are not bound to follow SEBI regulations.

<u>Now the question arises that what happens after the company is listed?</u>

A company has to comply with more regulatory norms when it becomes listed. It has to pay for the preparation of financial reporting documents, investor relation departments. It has to make necessary disclosures about the financial position, business operations or selling or acquisition of certain brands. Listing ensures the transparency of the operations of the company. The board and the management are accountable to the shareholders with respect to every material action.

a. The annual audit of the company is conducted by an independent and competent auditor. Appointment of independent audit committee
b. The company has to provide timely information to the stock exchange as well as the investors about dividend, bonus, rights issue and other company related information.
c. Closure facilities for transfer is available.

[2] Vinay Ranjan, *Listing and Delisting of shares,* http://www.legalserviceindia.com/article/l329-Listing-&-Delisting-Of-Securities.html

d. The company will have to comply with all the regulations of SEBI including securities law and other regulations provided by the RBI.
e. Appointment of a company secretary who will ensure the compliance by the company.
f. Appointment of share transfer agent to look after the management of share transfer facility in house.
g. Quarterly results of the operations of the company shall be sent to the stock exchange where they are listed. This shall also be put on their official website.
h. The company will have to issue the securities only in dematerialised form by complying with the provisions of Depositories Act, 1996.
i. Regulation for rotation of auditors under section 139(2) would be applicable. An individual auditor and auditor firm cannot be reappointed in the same company for 5 years after the completion of their terms.[3]
j. Through listing company's stocks can be traded on a daily basis.
k. High cost due to reporting requirements.

In addition to these, every stock exchange has its own set of guidelines which the company has to obey, for example rules regarding minimum issue and market capitalisation of the company.

What changes for founders when the company gets listed?

In business the founders are the people who establish the company—that is, they take on the risk and reward of creating something from nothing.[4] Founders are the one who have founded the company and they retain their title even when the company gets listed. They are the owners of the company but as soon as the shareholding increase there are many other owners too who have a say in the major decisions affecting the company.[5] The founders must have a minimum of shares in the company and can become CEOs who will be accountable to the board and can also delegate his duties to other executive directors. Their function remain the same which is primarily to make financial estimates and budgets to determine break even points and to ensure solvency and growth of the company.

How does the management, reporting and contracts impacted?

After the listing the way of management of affairs in the company changes.

[3] Companies Act, 2013 Section 139(2)
[4] Grogg Fairbrothers and Catalina Gorla, *Who is a Founder,* https://www.forbes.com/sites/greggfairbrothers/2013/05/06/who-is-a-founder/#13c6e1623654
[5] Alexander Jarvis ,*Difference between a founder and the board of directors* https://www.alexanderjarvis.com/what-is-the-difference-between-a-founder-and-the-board-of-directors/

a. The owners will have to share the ownership with other investors.
b. The voting rights of owners will be affected since the new shareholders will have voting rights and have a say in the important decisions of the company discussed at the general meeting.
c. Majority shareholders cannot make the decisions autonomously, the minority shareholders are also responsible and have a right to participate in the decision making process of the company.
d. The previous owners of the business do not have the exclusive control over the composition of the board.
e. The regulations make it mandatory for the company to have independent directors to protect the investors from insider influence and ensure the independence of the Board.

There are also additional reporting requirements such as:

a. It has to publish comprehensive financial statements and other audit reports of the company.
b. It must make extensive quarterly and annual disclosures about financial condition, operations, compensation to officers and directors and other internal matters including details of important contracts entered into by the company.
c. The listed entity shall ensure timely and accurate disclosure on all material matters including the financial situation, performance, ownership, and governance of the listed entity.[6]
d. Information about the business operations such as sales, cost of sales, gross profits, net income, borrowings and plans for the future.

When the company gets listed, its listing does not affect any of its debts and liabilities incurred or any contracts entered into by or with the company. Also in the case where Central Government withdraws the recognition given to a stock exchange, such withdrawal shall not affect validity of any contract entered into or made before the date of such notification.[7]

Subsequent to amendment in SEBI (Listing Obligations and Disclosure Requirements) Regulation 2015 notified on December 22, 2015, the requirement of mandatory reporting of BRR in Annual Report has been raised from hundred to five hundred listed entities which is effective from April 1, 2016 and hence it forms a part of the Annual Report for the financial year 2016-17.

[6] Regulation 2(e) of SEBI (Listing Obligations and Disclosure requirements) Regulations, 2015.
[7] Securities Contracts (Regulation) Act, 1956, Section 5(1)

Although it might lead to lack of privacy due to full disclosure requirements but it brings a sense of confidence among shareholders and other investors who have already invested or plan to invest their money in the company. And through this confidence ultimately company benefits since it is the fastest way to raise capital for the company.

CONCLUSION

Company needs enough cash to fund the process of public offering because the expenses starts incurring even way before the process actually starts. Potential growth must be analysed so that investors may reasonably predict the future returns as no one wants to invest in a company where it is troublesome to even predict the earnings. Companies should explicitly state the financials for the next three to five years helps the market to see the company's direction is. The company must also ensure that the debt to equity ratio is low.