Why should Companies not go for Listing?

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Securities Contract (Regulation) Act, 1956 ("SCRA") provides that "Where the securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange". Pursuant to insertion of these provisions in SCRA in 1956, the Listing Agreement, although a contract, was made a statutory requirement, thereby making it mandatory for every listed entity in India to comply with the Listing Agreement.

Listing Agreement entered into by listed companies with the stock exchanges prescribes initial and continuous disclosure norms. The modifications to provisions of Listing Agreement are prescribed by SEBI. The Listing Agreement has been modified from time to time to align with the regulatory requirements arising out of the dynamic changes in the capital market.

There is a need to enhance the enforceability of the regulatory provisions contained in the Listing Agreement and also to comply with the mandate of the Parliament as per the provision of SCRA and SEBI Act.

Companies are required by stock exchanges, securities commissions and regulators to disclose information on a regular basis so that investors and potential investors can make buy, sell or hold decisions. In various international jurisdictions (viz. USA, UK, etc.) the securities market regulator directly or indirectly scrutinizes/ reviews continuous disclosures. In some jurisdictions, a specific division/ unit of the regulator reviews continuous disclosures, e.g., US, SEC's Corporate Finance Division, UK FSA's Company Monitoring Team and Australian Issuer Unit wherein some basis is used for selection of cases for review.

A company's reasons for deciding to publicly list on the stock exchange often include the ability to get access to the capital markets for financial expansion and acquisitions. They usually have invested many years of ploughing back profits and guaranteeing borrowings and rather than sell out, they wish to remain with the company and be part of its future growth.

Company's business may become vulnerable to market fluctuations, which are outside control. If market conditions change during the floatation process they have to abandon the float. The costs of floatation can be substantial and there are also ongoing costs such as higher professional fees. Public companies have to comply with a wide range of additional regulatory requirements and meet accepted standards of corporate governance. Managers could be distracted from running the business by the demands of the floatation process, and by dealing with investors afterwards.

Going public makes the company under the supervision of the SEC or state regulatory agencies that regulate public corporations, as well as the stock exchange that has agreed to list the company's stock. This increase in regulatory oversight significantly changes the way you can manage the business. A private corporation can keep its internal business information private. A public corporation, however, must make extensive quarterly and annual disclosures about business operations, financial condition, compensation of directors and officers and other internal matters. It loses most privacy rights as a consequence of allowing the public to invest in its stock.

When a Company wishes to seek listing it increases the potential liability of the company and its officers and directors for mismanagement. By law, a public corporation has an obligation to its shareholders to maximize shareholder profits and disclose operational information. The corporation and its management can be sued for self-dealing, making material misrepresentations to shareholders or omitting information that the federal securities laws require to be disclosed.

While listing can be attractive to a company, it can also create problems for a company which could be the target of a takeover itself. Another potential disadvantage, particularly if the company seeking the listing has traditionally been run by a small group of directors/ shareholders, is that they will find their activities become the subject of much closer scrutiny by both their shareholders and other interested parties following the listing. The Company has the obligation to make public information relating to its current performance and future prospects so as to give the company's current and potential future shareholders adequate information on which to base their decisions on how to deal in the company's share.

A company once listed is subject to a range of continuing obligations. These continuing obligations are imposed on listed companies primarily by Listing Rules and the Disclosures and Transparency Rules.