

Reverse Flips

Comprehensive Considerations for Redomiciling to India

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Objective

This document serves as a guide for founders and shareholders in evaluating the suitability of a reverse flip of foreign-domiciled entities to India, covering key commercial, legal, and tax considerations.

The first half of this document provides a broad overview of these key issues.

More detailed analysis is set out in the second half.

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Reverse Flip to India: Why & How?

Why?



Feasibility of IPOs at reduced scale in India






India valuations at a premium to US / global peers



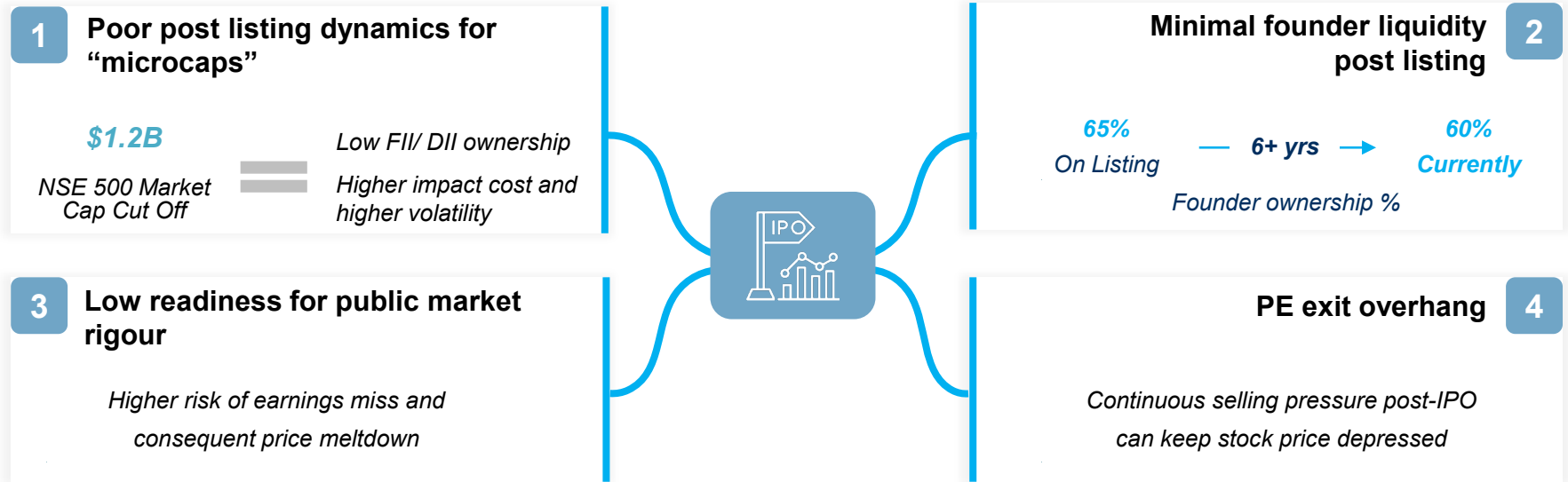
Eliminates tax compliance burdens and reduces dividend tax leakage

How?

Type	Description	Case Study
NCLT Approved Merger	Merger of offshore holding company and Indian subsidiary	
RD Approved Merger	Fast-track merger of offshore company with Indian subsidiary	
Share Sale	Offshore holding sells Indian subsidiary shares directly to shareholders	
Share Swaps	Offshore shares swap for Indian shares, making offshore company a subsidiary	<i>No precedent; Introd. In 2024</i>

Commercial Considerations: IPO Exit

Key commercial things to be aware of when preparing for an IPO exit



Lock-in period

Additional Considerations

6m Non-promoter
18m Promoter

Holding period prior to IPO

12m Prior to selling in OFS

Commercial Considerations: Strategic Sale

In case an IPO doesn't materialize post-flip and a strategic sale is explored

1

“Dry-tax” Burden

Disproportionate tax outflow in the event of a part cash, part-stock strategic sale

2

Fewer Interested Buyers

Some strategics and PE buyers are **limited only to Western geographies**

3

Complexity of Doing Cross Border Share Swap

Risk of **extended timelines and increased uncertainty** for global buyers

Tax and Legal Considerations

Tax

Exit tax applicable twice: first, when exiting the offshore country, and again when exiting in India

"Dry tax" scenario
depending on structuring –
capital gains tax may apply

Could **impact the ability to use past losses** to reduce future taxes

Legal

Feasibility depends on whether the **offshore country permits merging into India**

The resulting entity must **divest foreign assets and loans within two years**

Foreign **investors can't be promised a fixed exit price** in India

ESOP Considerations



Minimum vesting period ❖ Vested options require a **one-year wait before exercise**



ESOP ineligibility

- ❖ **Ex-Employees, consultants and vendors are ineligible** for ESOPs in India
- ❖ **PN3 grantees' options should be cash-settled** if approval isn't obtained



“Promoters” barred

- ❖ **Promoters cannot hold ESOP options** under SEBI regulations and may need to convert options into shares overseas or be reclassified

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Our Singapore-based corporate team is led by Stephanie Keen, a leading private equity and M&A expert in the region with extensive experience advising private equity sponsors and investment funds on inbound and outbound investments and co-investments. Included on its prestigious "A-List", Stephanie is lauded by *India Business Law Journal* for her strengths in Corporate / M&A, FDI into India, and private equity & venture capital.



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Transaction Square LLP

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