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Reducing Food Wastage: A Vital ESG Initiative for Companies

Introduction

Environmental, Social, and Governance (ESG) considerations has taken up the momentum and have become paramount. Companies are increasingly held accountable not just for their financial performance but also for their impact on the environment and society. Among the various ESG factors, waste management, particularly food wastage, has gained significant attention. Reducing food waste is not only a moral and environmental imperative but also a strategic business initiative that aligns with global sustainability goals. In this article, we explore how companies can tackle food wastage as part of their ESG strategies and contribute to a more sustainable future.

The Scope of Food Wastage:

Globally, it is estimated that about one-third of all food produced for human consumption is lost or wasted[i]. This wastage occurs at various stages of the supply chain—from production and processing to retail and consumption. The environmental impact of food wastage is staggering, with wasted food accounting for approximately 6% to 8% of global greenhouse gas emissions[ii]. Moreover, food wastage exacerbates issues like food insecurity and resource depletion, making it a critical area for corporate intervention.

ESG and Food Wastage: A Natural Alignment:

The ESG framework provides a comprehensive approach to tackling food wastage. From an environmental perspective, reducing food waste directly contributes to conserving water and energy, and preserving biodiversity. Socially, it addresses hunger and food insecurity, while governance involves setting up policies and processes that ensure responsible food management.

Strategies for Companies to Reduce Food Wastage

1. **Sustainable Sourcing and Supply Chain Management**
    - Companies can significantly reduce food wastage by adopting sustainable sourcing practices that involve partnering with suppliers committed to minimizing waste. This approach includes leveraging advanced technologies such as real-time inventory management systems to track and predict demand more accurately, thereby avoiding overproduction and excess stock. By closely monitoring supply chain activities, companies can reduce surplus production, ensuring that only the necessary quantities are produced. Additionally, any surplus food that does arise can be redirected through redistribution networks, where it can be donated or repurposed rather than discarded, further minimizing waste and contributing to social welfare. This holistic approach not only aligns with environmental goals but also promotes a responsible and efficient supply chain.

2. **Innovation in Product Design and Packaging**
   - Rethinking product design and packaging plays a crucial role in reducing food wastage by enhancing the longevity and usability of food products. Companies can develop innovative packaging solutions that extend shelf life, such as vacuum-sealed or modified atmosphere packaging, which slows down the deterioration of food and keeps it fresher for longer. Additionally, designing portion-controlled products helps prevent overconsumption and waste by providing consumers with the exact amount they need, reducing the likelihood of leftovers going unused. Investing in smart packaging technologies, such as sensors that monitor temperature, humidity, and freshness, enables real-time tracking of food quality, allowing consumers and retailers to better manage inventory and reduce spoilage. These packaging innovations not only minimize waste but also support sustainability by optimizing resource use throughout the product's lifecycle.
3. **Redistribution and Donation Avenues**
   - This is a powerful strategy for companies to combat food wastage by redirecting surplus food to those in need instead of discarding it. By forming partnerships with food banks, charities, and non-profit organizations, companies can create a streamlined process for donating edible but unsellable food products, such as items near their sell-by dates or excess inventory. These collaborations not only help address food insecurity in communities but also prevent large quantities of food from ending up in landfills, where it would contribute to greenhouse gas emissions as it decomposes. Moreover, such programs reflect a company's commitment to social responsibility and sustainability, enhancing its corporate image while making a tangible impact on hunger and waste reduction. Through these efforts, companies can turn potential waste into a valuable resource that benefits society and the environment.
4. **Circular Economy Practices**
   - Embracing circular economy principles allows companies to transform food waste into valuable by-products, thereby closing the loop on resource use and minimizing environmental impact. Instead of discarding food waste, companies can repurpose it into animal feed, which reduces the need for virgin agricultural inputs and supports livestock production. Additionally, food waste can be converted into bioenergy through processes like anaerobic digestion, generating renewable energy that can power operations or be sold to the grid. Composting food waste creates nutrient-rich soil amendments that enhance agricultural productivity, promoting sustainable farming practices. These approaches not only divert waste from landfills but also create new revenue streams for companies, turning what was once considered waste into economic and environmental opportunities. By integrating these practices,

companies contribute to a more sustainable and resilient food system while also benefiting their bottom line.

5. **Data-Driven Decision Making with Technology assistance**

   - Data analytics is a powerful tool for companies to systematically reduce food wastage by providing insights into where and how waste occurs across their operations. By collecting and analyzing data on waste generation—from production and processing to distribution and retail—companies can identify patterns, inefficiencies, and critical points where food is most likely to be lost or wasted. Leveraging technology to minimize food waste in organizations is not only smart but also sustainable. By integrating attendance tracking with data on employee preferences and dietary choices, we can accurately predict the amount of food required on any given day. This data-driven approach allows in tailoring inventory, ensuring that there is just the right mix of meals for our diverse team. With real-time adjustments, surplus can be reduced, wastage can be prevented, and a more efficient and responsible food management system can be created. It's a win-win for both the environment and operations. This approach not only optimizes resource use but also strengthens a company's commitment to environmental stewardship and operational efficiency.

Integration into Waste Management Systems

In India, several companies are tackling the issue of food wastage with innovative solutions. Here are a few examples:

1. **No Food Waste[iii]:** Founded in Tamil Nadu, No Food Waste is a startup dedicated to redistributing surplus food to those in need. They operate a mobile app that connects donors, such as restaurants and event organizers, with volunteers who collect and distribute food.

2. **Feeding India (acquired by Zomato)[iv]:** Feeding India was focused on reducing food waste by redistributing surplus food from events, restaurants, and hotels to the underprivileged. After being acquired by Zomato, the initiative has expanded its impact, leveraging the food delivery giant's resources to address hunger and reduce food wastage across the country.

3. **The Robin Hood Army[v]:** A social startup by model, The Robin Hood Army operates as a volunteer-based organization that partners with restaurants and individuals to collect surplus food and distribute it to the needy thereby relying on technology and a decentralized approach to scale their operations.

These highlight the growing focus on food waste reduction in India, particularly within the entrepreneurial ecosystem, where innovation and social impact are increasingly intertwined.

Conclusion

As companies continue to prioritize ESG in their business strategies, addressing food wastage should be at the forefront of their waste management efforts. By implementing sustainable practices, educating stakeholders, and integrating food waste reduction into their overall ESG agenda, companies can make a significant impact on the environment, society, and their bottom line. In doing so, they not only contribute to global sustainability goals but also build a resilient and responsible brand that resonates with consumers, investors, and the broader community.

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[i] https://www.theworldcounts.com/challenges/people -and-poverty/hunger-and-obesity/food-waste-statistics
[ii] https://www.worldwildlife.org/stories/fight-climate-change-by-preventing-food-waste#:~:text=And%20if%20food%20goes%20to,if%20we%20stop%20wasting%20food.
[iii] https://nofoodwaste.org/
[iv] https://www.livemint.com/companies/start -ups/zomato-acquires-food-donation-start-up-feeding-india-1562669599691.html
[v] https://robinhoodarmy.com/

Whether consolidation of Limited Liability Partnership [‘LLP’] is necessary?

Introduction.

The very concept of Limited Liability Partnership (LLP) originated from the thought that, advantages of companies and partnership firms should be combined in one entity and drawbacks thereof should be eliminated. That is the reason, an LLP has multiple features which resembles that of company. Especially after Ministry of Corporate Affairs (‘MCA’) has made certain sections of Companies Act 2013 [‘the Act’] applicable to LLPs, the difference between the two has reduced further.

Since requirement of preparation of financial statements are present in both laws, we shall try to deliberate through this article, whether a LLP can become as an ‘associate’ of a company for the purpose of consolidation.

‘Associate’ under Companies Act 2013.

The term ‘associate company’ is defined in section 2 sub-section (6) of the Act[i]. But this clause defines an ‘associate company’ and not an ‘associate.’ That means, as per the Act, only a company can become an associate of other company. The term ‘Company’ is defined under section 2(20) of the Act[ii]. As per this definition only that entity which is registered under the Act can be termed as a Company. Since LLP is not registered under Companies Act, it cannot be called as a ‘company’ and hence cannot be termed as ‘associate.’ Therefore, an LLP cannot be considered as ‘associate’ from the point of view of provisions of companies Act. Associate under INDAS 28.

Other than Companies Act, there is one more place where we can check whether a LLP can become associate of a company or not and that is, INDAS-28? Talking about investments in associates, this INDAS-28 defines [iii]associate as an entity over which the investor has a significant influence. That means; to find out any entity is an associate as per INDAS-28 or not, existence of significant influence has to be determined.

The term ‘significant influence’ is defined under, both INDAS-28, and Companies Act. INDAS-28 defines [iv]significant influence as, power to participate in financial and policy decisions of the investee entity. Whereas, as per [v]section 2(6) of the Companies Act, significant influence refers to control over 20% voting rights of the investee entity or control or participation in business decisions. Now there arises a question that which of the two definitions to apply?

The answer to this question can be found in [vi]Para 5 of INDAS-28. This Para of INDAS-28 in a way aligns both these definitions. It says that if an investor holds 20% or more voting power in an investee, then the investor is presumed to have significant influence over the investee and if he holds less than 20% voting rights, then he is presumed not to have significant influence over the investee. The Para further states that, if the investor holds less than 20% voting rights but still has significant influence or holds more than 20% voting rights but still does not have significant influence, then that fact must be proved with the help of parameters provided in Para 6.

Therefore, conjoint reading of definitions of ‘associate’ and ‘significant influence’ under INDAS-28 and Para 5 thereof along with definition of ‘significant influence’ under Companies Act, we can say that, if a company holds 20% or more voting rights in an LLP, then unless proved otherwise, that LLP is an associate of that company from the point of view of accounting standards.

Consolidation whether applicable.

If we look at the status of LLP as associate from the Companies Act perspective, it cannot be considered as associate. But if we look at the same from INDAS perspective, then it can be considered as associate. That means, there arise 2 contradicting views from reading of both set of rules and therefore, there arises a question that if a company holds say 25% voting rights in an LLP, then while preparing consolidated financial statements, should the company take in to consideration, the financial statements of LLP in the capacity of associate? The answer to this question can be found in [1]section 129(1) of the Companies Act 2013. This section says that consolidation of accounts should be done as per applicable accounting standards. And since as per INDAS-28, LLP is an associate, the effect of its financial statements on company shall be considered while consolidating the accounts of the company.

Other than section 129 of the Act, this view finds support from INDAS-110 which talks about consolidation of financial statements and [2]FAQs on consolidated financial statements issued by ICAI. Both these documents state that consolidation must be done with every entity over whom reporting company has control and entity includes LLPs as well. Therefore, despite not being a company, consolidation of accounts of LLP has to be done by companies.

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[i] (6) "associate company", in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company
[ii] (20) "company" means a company incorporated under this Act or under any previous company law;
[iii] An associate is an entity over which the investor has significant influence.

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[1] [(1) The financial statements shall give a true and fair view of the state of affairs of the company or companies, comply with the accounting standards notified under section 133 and shall be in the form or forms as may be provided for different class or classes of companies in Schedule III:
Provided that the items contained in such financial statements shall be in accordance with the accounting standards
[2] https://www.icai.org/post/faqs-on-preparation-of-consolidated-financial-statements -24-06-2016

iv Significant influence is the power to participate in the financial and operating policy decisions of the investee but is not control or joint control of those policies.

v [Explanation. —For the purpose of this clause, —
(a) the expression "significant influence" means control of at least twenty per cent. of total voting power, or control of or participation in business decisions under an agreement

vi 5 If an entity holds, directly or indirectly (e.g. through subsidiaries), 20 per cent or more of the voting power of the investee, it is presumed that the entity has significant influence, unless it can be clearly demonstrated that this is not the case. Conversely, if the entity holds, directly or indirectly (e.g. through subsidiaries), less than 20 per cent of the voting power of the investee, it is presumed that the entity does not have significant influence, unless such influence can be clearly demonstrated. A substantial or majority ownership by another investor does not necessarily preclude an entity from having significant influence.

6 The existence of significant influence by an entity is usually evidenced in one or more of the following ways:

(a) representation on the board of directors or equivalent governing body of the investee;
(b) participation in policy -making processes, including participation in decisions about dividends or other distributions;
(c) material transactions between the entity and its investee;
(d)) Interchange of managerial personnel; or
(e)) Provision of essential technical information.

Deciphering Stock Exchange's observation in giving NOC to draft schemes of arrangement.

Introduction

Regulation 37 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('SEBI LODR') mandates every listed entity desirous of undertaking a scheme of arrangement or involved in a scheme of arrangement under sections 230-234 and section 66 of Companies Act, 2013 to file the draft scheme of arrangement with the designated stock exchange(s) for obtaining the no-objection certificate, before filing such scheme with National Company Law Tribunal.

The designated stock exchange's approach for granting the no-objection certificate is based on certain parameters identified by the stock exchanges. Designated stock exchange may issue an observation letter pursuant to which it shall direct modifications or omissions to be done in the respective scheme(s) filed with it or give mandates to adhere to specific provisions and circulars as specified by designated stock exchanges. It may also direct to incorporate its observations or comments in the scheme.

However, in certain circumstances Stock Exchanges may reject and return the scheme absolutely or subject to compliance of certain conditions.

In this article, we shall study the list of schemes rejected by stock exchange and the reasons for rejecting the schemes.

Schemes rejected by the stock exchanges on repeated grounds:

1. The stock exchange has rejected schemes on various occasions owing to breach of the Fit and Proper Status. Compliance with 'fit and proper status' is checked only when companies involved in scheme of arrangement are SEBI registered intermediaries. The reason of such rejections are as follows:
    a. The scheme was rejected due to the chargesheet filed by the Economic Offence Wing against the Managing Director of the company proposed to be merged and the ongoing investigation into their 'fit and proper' status under the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 [i]. Given the potential legal ramifications and the uncertainty surrounding the Managing Director's future, it was deemed necessary to assess the potential impact on the businesses of the Transferor, Transferee companies, and the proposed scheme of arrangement. This clarity was essential to ensure investors could make informed decisions regarding the viability and potential risks associated with the merger.
    b. In another case the scheme was rejected owing to ongoing prosecution proceedings against the directors on the board of the Transferor Company and Transferee Company. Stock exchanges also directed the company to examine the impact of the proceedings on the scheme, companies, and investors.

Schemes rejected by the stock exchanges due to other miscellaneous reasons –

1. The entities involved in scheme of arrangement have not meet the minimum public shareholding requirement under SEBI (LODR) and para (A)(3)(b) of Part - I of SEBI Master Circular dated 20th June 2023[ii]. Further, SEBI advised to file fresh application by complying with the SEBI Circular.

2. Draft scheme was not in compliance with clause III(A)(1)(a) of Annexure I of the SEBI Circular No. CFD/DIL3/CIR/2017/21[iii], i.e. the equity shares to be allotted by the Transferee company to the shareholders of the transferor companies was not sought to be listed, basis which SEBI has returned the draft scheme, and the company was advised to re-submit the same after ensuring compliance with the provisions mentioned in the circular.

3. The draft Scheme was contingent upon the successful completion of a concurrent scheme, the timeline for which is currently uncertain. As a result, stock exchange decided to defer approval of the draft Scheme until the outcome of the concurrent Scheme is determined or until it receives NCLT approval.

4. The Company executed a Slump Sale Agreement on September 6, 2023, and subsequently approved a Scheme of Amalgamation on September 25, 2023. The Scheme was contingent upon the successful completion of the Slump Sale. However, the Stock Exchange returned the Scheme as the Slump Sale condition precedent was not fulfilled at the time of applying for the No Objection Certificate under Regulation 37 of the SEBI (LODR).

5. The Scheme for reduction of share capital between a company and its shareholders was rejected because incomplete information was submitted at first instance and even after repeated emails being sent for same by regulatory authorities.

6. One of the companies to the scheme of merger had not applied for registration as NBFC under Section 45-1A of the RBI Act, 1934 and was wrongfully disclosing in its financial statement regarding having applied for registration as an NBFC. Further, the company was conducting NBFC activities without holding a certificate of registration issued by RBI, which is in violation of Reserve Bank of India Act, 1934. In view of the aforesaid, SEBI returned the draft scheme.

7. SEBI has rejected the scheme basis the unresolved complaint of another company against the captioned scheme before the Hon’ble High Court, Kerala. SEBI has returned the scheme and has advised to re-submit the same upon resolution of the complaint and disposal of the case.

8. The rationale of the scheme was based on the fact of the company having negative retained earnings however by the time the scheme of merger came for consideration before the stock exchange, the negative retained earnings had progressed to positive retained earnings owing to significant profits because of which the justification for the proposed scheme was no longer warranted and hence rejected by the exchange.

9. As per NSE's standard operating procedures dt: December 20, 2022[iv], draft scheme shall be filed within 15 days of approval of Scheme by the Board of Directors of the company but the same has been filed after 15 days which is in non-compliance of SEBI Standard Operating Procedures. Consequently, the scheme has been rejected.

Key Learnings for Successful Filling of Schemes with BSE

- Address any outstanding legal proceedings, financial instability, or unresolved disputes before filing a scheme.
- Conduct a thorough due diligence process to identify and address potential risks and issues.
- Keep abreast of any changes in SEBI guidelines to avoid non-compliance.
- Ensure strict adherence to SEBI regulations, particularly those related to minimum public shareholding, disclosure requirements.
- Reduce the risk of rejection, companies should strive to structure schemes independently, without making them contingent upon other transactions or schemes. This eliminates uncertainties and potential delays that could hinder approval.
- Companies should conduct a thorough analysis of the fit and proper status of their promoters, directors, and other key personnel. This involves assessing factors like legal ongoing proceedings, past legal records, financial history, and any potential conflicts of interest.
- Assurance on Compliance with the SEBI Mater Circulars is a pre-requisite to mitigate the risk of rejection due to regulatory non-adherence.
- Companies should provide complete and accurate disclosures in their applications to stock exchanges. This includes details about the scheme, rationale for the merger, financial projections, and any potential risks or uncertainties.
- Avoiding Misleading / wrong information to Stock Exchange as along with rejection it can also lead to legal consequences.
- Ensuring that the Rationale for undertaking the scheme matches the current facts, situations, and circumstances.

Conclusion

In hindsight, study of the cases rejected by the stock exchange is crucial to anticipate the observations or reasons for rejection when preparing to file a scheme of arrangement. Study of these reasons would help stakeholders draft schemes in a better manner. In navigating the grounds behind scheme rejections by stock exchanges, it becomes evident that these decisions are not merely regulatory hurdles but essential safeguards for market integrity. By scrutinizing schemes thoroughly, stock exchanges aim the mitigation of risks, promotion of accountability and prevention of contingencies among other things.

This article is published in Taxmann. The link to the same is as follows:
https://www.taxmann.com/research/company-and-sebi/top-story/105010000000024474/deciphering-stock-exchanges-observation-in-giving-noc-to-draft-schemes-of-arrangement-experts-opinion

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[i] Link : https://www.sebi.gov.in/legal/regulations/aug-2022/securities-and-exchange-board-of-india-intermediaries-regulations-2008-last-amended-on-august-1-2022-_61700.html

[ii] Link - https://www.sebi.gov.in/legal/master-circulars/jun-2023/master-circular-on-scheme-of-arrangement_72839.html

[iii] Link - https://www.sebi.gov.in/legal/circulars/mar-2017/circular-on-schemes-of-arrangement-by-listed-entities-and-ii-relaxation-under-sub-rule-7-of-rule-19-of-the-securities-contracts-regulation-rules-1957_34352.html

[iv] Link - https://ca2013.com/clarifications/nse-circular-dated-20-12-2022-regarding-revised-standard-operating-procedure-sop-application-filed-regulation-37-59a-sebi-lodr-regulations-2015-w-r-t-scheme-arrangements/

The Post-Listing Challenges of SMEs

Introduction

Initial Public Offerings (IPOs) are often seen as a hallmark of success and a major milestone for Small and Medium Enterprises (SMEs). SMEs often embark on the journey of becoming publicly listed companies with great optimism, envisioning increased capital, enhanced credibility, and accelerated growth. However, the reality post-listing can be fraught with challenges. However, while an IPO can provide a company with the necessary capital to expand and grow, many SMEs struggle to sustain themselves in the post-IPO period. In order to understand this better it is necessary to analyse performance of SMEs.

Data for Analysis

We randomly selected ten sectors and one listed SME company from each sector for analysis. We analysed the growth in the revenue and net profit of the companies before and after listing of the company which sheds light on some of the reasons behind this phenomenon. In this article we shall deliberate on probable reasons for why SMEs struggle to sustain after listing.

For future sustenance of company, understanding and addressing these challenges is crucial for the sustainability of SMEs in the public market.

Upon examining the financials of randomly selected listed SMEs before and after their listing, it has been observed that many SMEs struggle to achieve steady growth even after securing funds from the public (ref. Image 1& 2 Below, Source of Data: Taken from Annual reports of the selected sample companies.).

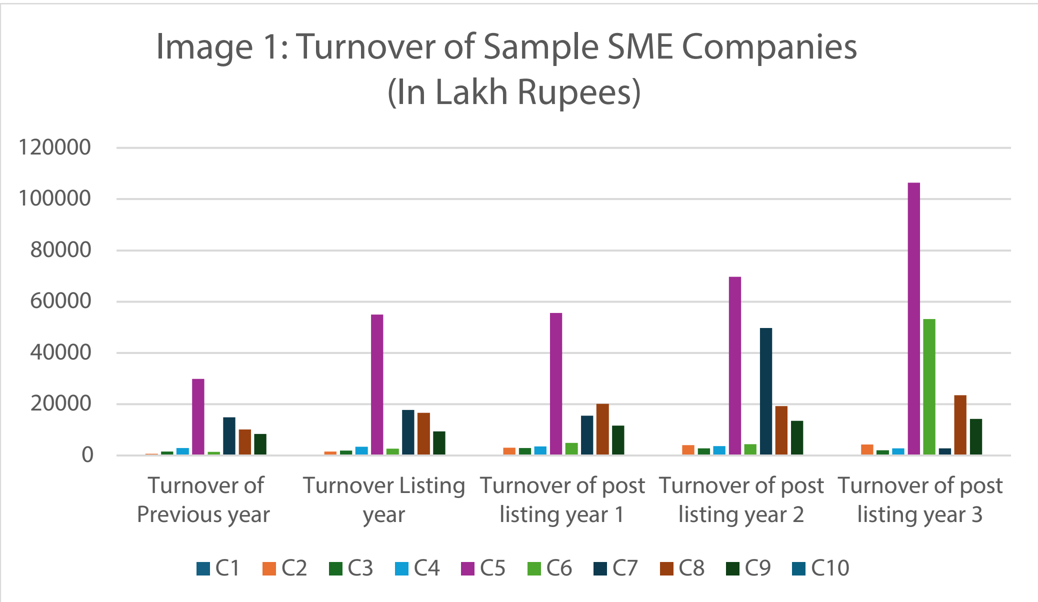

Image 1: Turnover of Sample SME Companies (In Lakh Rupees)

Image 1: Change in Turnover of Randomly selected companies from the financial year before listing, the listing year and that of years after listing.

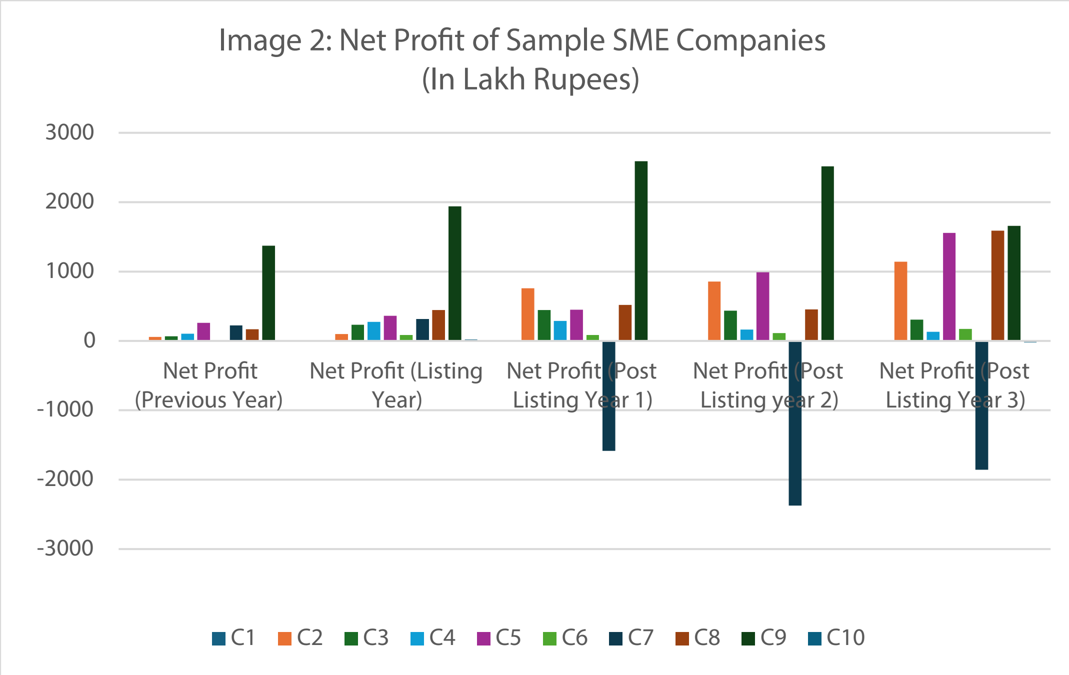

Image2 : Change in net Profit of Randomly selected companies from the financial year before listing, the listing year and that of years after listing.

Based on the graphs above, it is evident that SMEs typically list on stock exchanges to raise capital intended for the company's growth, which ideally should be exponential. However, the data reveals a different trend. While some companies have shown consistent growth, only a few have achieved exponential expansion. The majority of these companies struggle to reach this level, with some even experiencing losses.

The potential reasons or root causes for these outcomes are as follows:

1. **Access to Capital:**
   When SMEs decide to list on a stock exchange, they aim to enhance their access to capital. However, they often face the challenge of not receiving the expected investment influx. Investors typically perceive SMEs as riskier compared to larger, well-established companies. Therefore, engaging with potential investors consistently becomes crucial for SMEs. It can be achieved by presenting a clear and compelling story about the company's growth potential and financial stability.
2. **Operational Inefficiencies:**
   SMEs often lack the sophisticated operational setups of larger companies. When they go public on a stock exchange, they come under pressure to scale up, which can expose these inefficiencies. To tackle this issue effectively, SMEs need to focus on streamlining their processes, investing in technology, and strengthening their operational oversight. These steps are vital for them to successfully adjust and thrive after listing.

3. **Market Competition: Battling the Giants**

   After SMEs list on a stock exchange, they often face a daunting competitive landscape where larger companies dominate with greater resources and market presence. To navigate this challenge successfully, SMEs must emphasize their unique strengths and leverage them to carve out a stable and enduring position in the market. This strategic focus is essential for them to thrive amidst larger competitors.

4. **Management Expertise:**

   When SMEs transition to becoming publicly listed companies, they face a significant demand for heightened management expertise. This shift can be challenging because their leadership teams may lack prior experience dealing with the complexities of public company governance. As a result, many SMEs find this transition period quite daunting. It underscores the importance of acquiring the necessary skills and support to effectively manage the responsibilities that come with being a publicly traded entity.

5. **Market Volatility: Weathering Economic Storms**

   SMEs often find themselves at greater risk during times of market volatility and economic downturns. This vulnerability stems from the fact that fluctuations in market conditions can exert a more significant impact on their financial stability compared to larger, more established companies. It underscores the importance for SMEs to be prepared to navigate these challenges with resilience and strategic planning to safeguard their operations and sustainability in uncertain economic environments.

6. **Investor Relations:**

   For SMEs, maintaining effective investor relations is crucial to sustaining investor confidence. However, SMEs often face challenges in this area because they may lack dedicated resources or expertise for investor relations. As a result, managing communication and engagement with investors can be particularly demanding. It highlights the importance for SMEs to prioritize building strong relationships with investors, communicating their company's performance and growth prospects clearly and consistently, despite resource limitations. This proactive approach can help SMEs enhance transparency and trust, essential for long-term investor support.

7. **Economic Conditions:**

   SMEs are often more sensitive to broader economic conditions, such as inflation, trade policies, and geopolitical events. These factors can have a significant impact on SMEs, potentially affecting their operations and financial stability to a greater extent than larger corporations. Therefore, SMEs need to stay vigilant and adapt quickly to changing economic landscapes. This adaptability is crucial for them to navigate challenges effectively and sustain their growth amid external economic pressures.

Conclusion:

Becoming publicly listed through an IPO is a significant milestone for SMEs, promising increased capital and credibility. However, the reality often includes challenges that can hinder sustained growth post-listing. Issues such as limited access to capital, operational inefficiencies, intense market competition, and the need for enhanced management expertise and investor relations all contribute to these difficulties. Moreover, SMEs are more vulnerable to market volatility and economic downturns, further complicating their path to stability. Addressing the challenges of declining performance post-listing for SME companies can be achieved through the following initiatives:

1. **Strategic Focus**: Prioritizing long-term goals and aligning business activities to enhance growth and market positioning.
2. **Proactive Management**: Anticipating market changes and making timely decisions to mitigate risks and seize opportunities.
3. **Adaptability**: Embracing flexibility and innovation to respond to evolving market dynamics and ensure sustained success in the public market.

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Overseas Investment in financial services:

Introduction: The Ministry of Finance had notified Foreign Exchange Management (Overseas Investment) Rules, 2022 on August 22, 2022 in suppression of Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004.

While the significant changes brought by the new framework included dispensing off the requirement of approval for deferred payment of consideration, write off on account of disinvestment, introduction of late filing fees, it also paved way for Indian entities to invest in overseas entities engaged in financial services as per the Rules.

Erstwhile Framework

Regulation 7 of Notification No. FEMA 120/ RB-2004 allowed investment by an Indian party in an entity outside India engaged in financial services subject to following conditions:

1. The Indian party has earned net profit during the preceding three financial years from the financial services activities
2. The Indian party is registered with the regulatory authority in India for conducting the financial services activities
3. The Indian party has obtained approval from the concerned regulatory authorities both in India and abroad, for venturing into such financial sector activity
4. The Indian party has fulfilled the prudential norms relating to capital adequacy as prescribed by the concerned regulatory authority in India.

Any additional/ further investment in the overseas entity or its step down subsidiary also required to be in lines with the above conditions.

Revised ODI Framework

The Ministry of finance vide Foreign Exchange Management (Overseas Investment) Rules, 2022 had eased on the conditions for overseas investment in entity outside India engaged in financial services. While the earlier framework allowed only entities engaged in financial services to invest in overseas entity engaged in financial services, the Rules under the revised framework further allowed Indian entities not engaged in financial services in India to invest in overseas entity engaged in financial services.

Sr No.	Business activity of Indian entity*	Business activity of overseas entity	Situation as per FEMA 120/ RB-2004 (prior to 2022)	Situation as per OI Rules (post 2022)
1	Indian entity engaged in financial services	Overseas entity engaged in financial services	Allowed, subject to conditions prescribed under Regulation 7 of FEMA 120/ RB-2004	Allowed subject, to conditions in Para 2(1)** of Schedule I of Rules
2	Indian entity not engaged in financial services	Overseas entity engaged in financial services	Not Allowed	Allowed subject, to conditions in Para 2 (2)*** of Schedule I of Rules

3	Indian entity not engaged in financial services	Overseas entity not engaged in financial services	Allowed, except investment in overseas entity engaged in real estate or banking business	Allowed, except investment in : • real estate • gambling in any form and • dealing with financial products linked to the Indian rupee without specific approval of RBI
4	Indian entity engaged in financial services	Overseas entity not engaged in financial services	Subject to prior RBI permission	Subject to prior RBI permission

*Indian entity shall mean a company defined under the Companies Act, 2013 or a body corporate incorporated by any law for the time being in force or a Limited Liability Partnership formed under the Limited Liability Partnership Act, 2008 or a partnership firm registered under the Indian Partnership Act, 1932.

- ****Conditions for ODI in overseas entity engaged in financial services by Indian entity (excluding trust or society) engaged in financial services:**

Para 2(1) of Schedule I of the Rules prescribes following conditions for Overseas Direct Investment in overseas entity engaged in financial services by an Indian entity engaged in financial services:

1. Indian entity has posted net profits during preceding 3 financial years.
2. Indian entity is either registered with or regulated by financial services regulator in India
3. Indian entity has obtained requisite approvals required in India and the host country/ jurisdiction for carrying out financial services.

- *****Conditions for ODI in overseas entity engaged in financial services by Indian entity (excluding trust or society) not engaged in financial services:**

An Indian entity which is not engaged in financial services shall be allowed to make Overseas Direct Investment in overseas entity engaged in financial services (except banking or insurance) subject to condition that such Indian entity has posted net profits during the preceding three financial years.

ODI in entity engaged in general and health insurance sector shall be permitted for Indian entity provided that such insurance business supports the core activity undertaken overseas.

ODI in entity carrying out financial services by a Registered Trust or Society

Schedule IV of the Overseas Investment Rules allows registered trust or society engaged in educational sector or which has set up hospitals in India to make ODI subject to conditions with **prior approval** of Reserve Bank of India.

The conditions prescribed are as follows:

i. Foreign entity shall be engaged in the same sector
ii. The trust or the society shall be in existence for atleast three financial years before making ODI
iii. Trust deed/ memorandum of association/ rules/ bye laws shall permit proposed ODI
iv. Such investment shall be approved by the trustees in case of trust or governing body/ council/ managing or executive committee in case of society

v. In case the trust or the society require special licence or permission either from the Ministry of Home Affairs, Central Government or from the relevant local authority, such special licence or permission has been obtained and submitted to the designated AD bank.

Thus, it can be identified that a registered trust or society shall be allowed to invest in foreign entity engaged in the same business activity i.e. either education sector or setting up hospitals with prior approval from RBI and shall not be allowed to invest in financial services overseas.

Overseas Investment in IFSC

An Indian entity not engaged in financial services, shall be allowed to make Overseas Direct Investment in IFSC irrespective of it earning net profits in the preceding year or not.

Resident Individuals are also allowed to make Overseas Direct Investment in IFSC irrespective whether the entity is engaged in financial services or not (except in banking and insurance). Provided, where an individual has control in the overseas entity, such entity shall not have subsidiary or step down subsidiary

Conclusion:

1. The OI Rules provide for general permission for
    - Indian entity engaged in financial services making ODI in overseas entity engaged in financial services.
    - Indian entity not engaged in financial services making ODI in overseas entity engaged in financial services subject to posting net profits in the preceding three financial years.

2. However, the Rules do not provide general permission for Indian entity engaged in financial services to make ODI in overseas entity which is not engaged in financial services. Thus, an Indian entity which is engaged in financial services investing in overseas entity not engaged in financial services should seek approval through the AD Bank.

    Similarly, Indian entity engaged in financial services for making ODI into an overseas entity which is not registered/ regulated by an overseas financial service regulator (such financial services activity if carried out in India requires to be registered or regulated by financial services regulator) shall seek permission prior to making such investment.

3. The new ODI framework introduced in 2022, has allowed Indian entities not engaged in financial services for making ODI in overseas entity engaged in financial services subject to Indian entity posting net profits as per Rules. This shall enable the Indian entities reap the benefits of return on investment in financial service sectors and engage in financial services overseas.

4. Individuals though do not have general permission for ODI in financial services activity overseas (except through esop/ sweat equity/ qualification shares), ODI in entity carrying out financial services in IFSC is allowed. This provides resident individuals an opportunity to invest in financial service sector and enables boost in flow of investments in IFSC.
5. **Statistics pre and post revised ODI framework:**

	July 2022 (Prior to OI Rules)	**June 2024 (Post introduction of OI Rules)**
	Amount in USD millions	**Amount in USD millions**[i]
Total Overseas Investment	1109.86	2145.57

Investment in financial, insurance and business services	252.3968	544.4024
Percentage of Investment in financial, insurance and business services	22.74%	25.37

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[i] Source: Press release by Reserve Bank of India https://rbi.org.in/scripts/FS_PressRelease.aspx?fn=5

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