ISSUE OF FOREIGN CURRENCY CONVERTIBLE BONDS AND ORDINARY SHARES (THROUGH DEPOSITORY RECEIPT MECHANISM) SCHEME, 1993

CONTENTS

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[1]1 . GSR No. 700(E), dated 12-11-1993. This scheme has been notified for the purpose of section 115AC. Central Government hereby notifies the following scheme, for facilita- ting issue of Foreign Currency Convertible Bonds and Ordinary Shares Through Global Depositary Mechanism by Indian Companies, namely:-

1. Short title and commencement :-

(1) This scheme may be called the Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depositary Receipt Mechanism) Scheme, 1993.

(2) It shall be deemed to have come into force with effect from the first day of April, 1992.

2. Definitions :-

In this scheme, unless the context otherwise requires,-

(a) "Domestic Custodian Bank" means a banking company which 4s as a custodian for the ordinary shares or foreign currency convertible bonds of an Indian company which are issued by it against global depository receipts or certificates;

(b) "foreign currency convertible bonds" means bonds issued in accordance with this scheme and subscribed by a non-resident in foreign currency and convertible into ordinary shares of the issuing company in any manner, either in whole, or in part, on the basis of any equity related warrants attached to debt instruments;

(c) "Global Depositary Receipts" means any instrument in the form of a depository receipt or certificate (by whatever name it is called) created by the Overseas Depositary Bank outside India and issued to non-resident investors against the issue of ordinary shares or Foreign Currency Convertible Bonds of issuing company;

(d) "issuing company" means an Indian company permitted to issue Foreign Currency Convertible Bonds or ordinary shares of that company against Global Depositary Receipts;

(e) "Overseas Depository Bank" means a bank authorised by the issuing company to issue Global Depositary Receipts against issue of Foreign Currency Convertible Bonds or ordinary shares of the issuing company;

(f) the words and expressions not defined in the Scheme, but defined in the Income-tax Act, 1961 (43 of 1961), or Companies Act, 1956 , or the Securities and Exchange Board of India the Income-tax Act or Companies Act, 1956 , or Securities and Exchange Board of India Act, 1992 .

[1] (g) A software company' means a company engaged in manufacture or production of software where not less than 80% of the company's turnover is from software activities;

(h) Information Technology Software and Information Technology Services' means the companies which deal with such activities as defined in recommendation No. 19(a) and (b) of the Notification dated 25.07.1998 issued by the Planning Commission.

1. Inserted vide " ISSUE OF FOREIGN CURRENCY CONVERTIBLE BONDS AND ORDINARY SHARES (THROUGH DEPOSITORY RECEIPT MECHANISM) SCHEME, 1993" Dt.11th November, 1999 Published

in [Noti. No. S-11(25)/CCI-II/89/NRI,G.S.R. 764(E) dt. 10.11.99-Gaz. of India, Exty., Pt. II-Sec. 3d). No. 561, dt. 11.11.99, p. 2.]

3. Eligibility for issue of convertible bonds or ordinary shares of issuing company :-

(1) An issuing company desirous of raising foreign funds by issuing foreign currency convertible bonds or ordinary shares for equity issues through Global Depositary Receipt is required to obtain prior permission of the Department of Economic Affairs, Ministry of Finance, Government of India.

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(1)(i). An Indian Company may sponsor an issue of ADRs/GDRs with an overseas depositary against shares held by its shareholders at a price to be determined by the Lead Manager, in respect of:

(a) Divestment by shareholders of their holdings of Indian companies listed in India.

(b) Divestment by shareholders of their holdings of Indian companies not listed in India but which are listed overseas.

(ii) Such a facility would be available pari passu to all categories of shareholders of the company whose shares are being sold in the ADR/GDR market overseas.

(iii) An approved intermediary under the scheme, would be an Investment Banker registered with the Securities and Exchange Commission in the USA, or under Financial Services Authority in U.K., or the appropriate regulatory authority in Germany, France, Singapore or in Japan.

(iv) Such issues would need to conform to the Foreign Direct Investment Policy and other mandatory statutory requirements and detailed guidelines issued in this regard. The provisions of paragraph (4B) of Schedule I to Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 as notified by Reserve Bank of India vide Notification No. FEMA 41/2001-RB, dated March 2, 2001, would also need to be adhered to.

(2) An issuing company seeking permission under sub-paragraph (1) shall have a consistent track record of good performance (financial or otherwise) for a minimum period of three years, on the basis of which an approval for finalising the issue structure would

be issued to the company by the Department of Economic Affairs, Ministry of Finance.

(3) On the completion of finalisation of issue structure in consultation with the Lead Manager to the issue, the issuing company shall obtain the final approval for proceeding ahead with the issue from the Department of Economic Affairs. Explanation.- For the purposes of sub-paragraphs (2) and (3) "issue structure" means any of the requirements which are provided in the paragraphs 5 and 6 of this scheme.

(4) The foreign currency convertible bond shall be denominated in any freely convertible foreign currency and the ordinary shares of an issuing company shall be denominated in Indian rupees.

(5) When an issuing company issues ordinary shares or bonds under this scheme, that company shall deliver the ordinary shares or bonds to a Domestic Custodian Bank who will, in terms of agreement, instruct the Overseas Depositary Bank to issue Global Depositary Receipt or certificate to non-resident investors against the shares or bonds held by the Domestic Custodian Bank.

(6) A Global Depositary Receipt may be issued in the negotiable form and may be listed on any international stock exchanges for trading outside India.

(7) The provisions of any law relating to issue of capital by an Indian company shall apply in relation to the issue of Foreign Currency Convertible Bonds or the ordinary shares of an issuing company and the issuing company shall obtain the necessary permission or exemption from the appropriate authority under the relevant law relating to issue of capital.

1. In Scheme 3, sub-scheme 1(i), shall be inserted by Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depositary Receipt Mechanism) (Amendment) Scheme-II,2002., Noti. No. 15123199-NR1, dt. 29.7.2002 Gaz. of India, Exty., Pt. II-Sec. 3(i), No. 354, dt. 30.7.2002, p. 3.

<u>3A.</u> 3A :-

[1] Indian companies engaged in Information Technology Software and Information Technology Services, are eligible to offer to their non-resident/resident depermanent employees (including Indian and overseas working directors) Global Depository Receipts against the issue of ordinary shares under the Scheme subject to the operational guidelines/conditions issued from time to time by the

Government.

1. Inserted vide " ISSUE OF FOREIGN CURRENCY CONVERTIBLE BONDS AND ORDINARY SHARES (THROUGH DEPOSITORY RECEIPT MECHANISM) SCHEME, 1993" Dt.11th November, 1999 Published in [Noti. No. S-11(25)/CCI-II/89/NRI,G.S.R. 764(E) dt. 10.11.99-Gaz. of India, Exty., Pt. II-Sec. 3d). No. 561, dt. 11.11.99, p. 2.]

<u>3C.</u> 3C :-

1 Indian Companies registered in India and engaged in the following sectors/areas, where 80% of turnover is from these sectors/areas of the operation/business of the company in the three previous financial years, are eligible to offer Global Depositary Receipts against the issue of ordinary shares under the Scheme to their non-resident/resident permanent employees (including Indian and overseas working directors) and also of their subsidiary companies, incorporated in India or abroad, subject to the eligibility conditions and operational guide lines/conditionalities announced from time to time by the Government:

(i) Information Technology [as defined in the recommendation No. 19(a) and (b) of Gazette Notification dated 25.07.1999 issued by the Planning Commission] and Entertainment Software.

(ii) Pharmaceuticals.

(iii) Biotechnology.

(iv) Any other activities within the knowledge based sector as notified by the Government from time to time.

These norms would also be available for multi-product diversified companies which do not conform to the criteria of 80% turn over as mentioned above but having an average annual expert earnings of Rs. 100 Crores from the sectors mentioned above in the three previous financial years.".
1. Scheme 3C, shall be inserted; by Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depositary Receipt Mechanism) (Amendment) Scheme, 2001. Noti. No. S-11(25)ICCI-I1/89/NRI. Dated. 18/9/2001,Gaz. of India, Exty., Part. II, Sec. 3(i), No. 478, dated. 21/9/2001, page. 3

<u>4.</u> Limits of foreign investment in the issuing company :-
The ordinary shares and Foreign Currency Convertible Bonds issued against the Global Depository Receipts shall be treated as direct foreign investment in the issuing company. The aggregate of the foreign investment made either directly or indirectly (through Global Depositary Receipts Mechanism) shall not exceed 51% of the

issued and subscribed capital of the issuing company: Provided that the investments made through Offshore Funds or by Foreign Institutional Investors will not form part of the limit laid down in this paragraph.

5. Issue structure of the Global Depositary Receipts :-

(1) A Global Depository Receipt may be issued for one or more underlying shares or bonds held with the Domestic Custodian Bank.

(2) The Foreign Currency Convertible Bonds and Global Depository Receipts may be denominated in any freely convertible foreign currency.

(3) The ordinary shares underlying the Global Depositary Receipts and the Shares issued upon conversion of the Foreign Currency Convertible Bonds will be denominated only in Indian currency.

(4) The following issues will be decided by the issuing company with the Lead Manager to the issue, namely:-

(a) public or private placement;

(b) number of Global Depositary Receipts to be issued;

(c) the issue price;

(d) the rate of interest payable on foreign Currency Convertible Bonds; and

(e) the conversion price, coupon, and the pricing of the conversion options of the Foreign Currency Convertible Bonds.

(5) There would be no lock-in-period for the Global Depositary Receipts issued under this scheme.

6. Listing of the Global Depositary Receipts :-
The Global Depositary Receipts issued under this scheme may be listed on any of the Overseas Stock Exchanges, or Over the Counter Exchanges or through Book Entry Transfer Systems prevalent abroad and such receipts may be purchased, possessed and freely transferable by a person who is a non-resident within the meaning of S.2(q) of the Foreign Exchange Regulation Act, 1973 subject to the provisions of that Act.

7. Transfer and redemption :-

(1)A non-resident holder of Global Depositary Receipts may transfer those receipts, or may ask the Overseas Depositary Bank to redeem those receipts. In the case of redemption, Overseas Depositary Bank shall request the Domestic Custodian Bank to get the corresponding underlying shares released in favour of the non-resident investor, for being sold directly on behalf of the non-resident, or being transferred in the books of account of the issuing company in the name of the non-resident.

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[(1A) The Global Depository Receipts redeemed and underlying shares sold in terms of 7(1) of the Scheme may be reissued to the extent of such redemption and sale made in the domestic market. Such reissuance will be in terms of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 as amended from tune to time and the guidelines issued in this regard.]

(2) In case of redemption of the Global Depositary Receipts into underlying shares, a request for the same will be transmitted by the Overseas Depository Bank to the Domestic Custodian Bank in India, with a copy of the same being sent to the issuing company for information and record.

(3) On redemption, the cost of acquisition of the shares underlying the Global Depositary Receipts shall be reckoned as the cost on the date on which the Overseas Depository Bank advises the Domestic Custodian Bank for redemption. The price of the ordinary shares of the issuing company prevailing in the Bombay Stock Exchange or the National Stock Exchange on the date of the advice of redemption shall be taken as the cost of acquisition of the underlying ordinary shares.

(4) For the purposes of conversions of Foreign Currency Convertible Bonds, the cost of acquisition in the hands of the non-resident investors would be the conversion price determined on the basis of the price of the shares at the Bombay Stock Exchange, or the National Stock Exchange, on the date of conversion of Foreign Currency Convertible Bonds into shares.

1. Inserted by "The Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) (Amendment) Scheme, 2002",S.3 dt. 13/02/2002

8. Taxation on Foreign Currency Convertible Bonds :-

(1) Interest payments on the bonds, until the conversion option is exercised, shall be subject to deduction of tax at source at the rate of ten per cent.

(2) Tax on dividend on the converted portion of the bond shall be subject to deduction of tax at source at the rate of ten per cent.

(3) Conversion of Foreign Currency Convertible Bonds into shares shall not give rise to any capital gains liable to income-tax in India.

(4) Transfers of Foreign Currency Convertible Bonds made outside India by a non-resident investor to another non-resident investor shall not give rise to any capital gains liable to tax in India.

9. Taxation on shares issued under Global Depositary Receipt Mechanism :-

(1) Under the provisions of the Income-tax Act, income by way of dividend on shares will be taxed at the rate of 10 per cent. The issuing company shall transfer the dividend payments net after deducting tax at source to the Overseas Depository Bank.

(2) On receipt of these payments of dividend after taxation, the Overseas Depository Bank shall distribute them to the- non-resident investors proportionate to their holdings of Global Depositary Receipts evidencing the relevant shares. The holders of the depository receipts may take credit of the tax deducted at source on the basis of the certification by the Overseas Depositary Bank, if permitted by the country of their residence.

(3) All transactions of trading of the Global Depositary Receipts outside India, among non-resident investors, will be free from any liability to income-tax in India on capital gains therefrom,

(4) If any capital gains arise on the transfer of the aforesaid shares in India to the non-resident investor, he will be liable to income-tax under the provisions of the Income-tax Act. If the aforesaid shares are held by the non-resident investor for a period of more than twelve months from the date of advice of their redemption by the Overseas Depositary Bank, the capital gains arising on the sale thereof will be treated as long-term capital gains and will be subject to income-tax at the rate of 10 per cent under the provisions of section 115AC of the Income-tax Act. If such shares are held for a period of less than twelve months from the date of redemption advice, the capital gains arising on the sale thereof will

be treated as short-term capital gains and will be subject to tax at the normal rates of income-tax applicable to non-residents under the provisions of the Income-tax Act.

(5) After redemption of the depository receipts into underlying shares, during the period, if any, during which these shares are held by the redeeming non-resident foreign investor who has paid for these shares in foreign exchange at the time of purchase of the Global Depositary Receipt, the rate of taxation of income by way of dividends on these shares would continue to be at the rate of 10 per cent, in accordance with section 115AC(1) of the Income-tax Act. The long-term capital gains on the sale of these redeemed underlying shares held by non-resident investors in the domestic market shall also be charged to tax at the rate of 10 per cent, in accordance with the provisions of section 115AC(1).

(6) When the redeemed shares are sold on the Indian Stock Exchanges against payment in rupees, these shares shall go out of the purview of the section 115AC of the Income-tax Act and income therefrom shall not be eligible for the concessional tax treatment provided thereunder. After the transfer of shares where consideration is in terms for rupees payment, the normal tax rates would apply to the income arising or accruing on these shares.

(7) Deduction of tax at source on the amount of capital gains accruing on transfer of the shares would be made in accordance with section 195 and 196C of the Income-tax Act.

10. Application of avoidance of double taxation agreement in case of Global Depositary Receipts :-

(1) During the period of fiduciary ownership of shares in the hands of the Overseas Depositary, Bank, the provisions of Avoidance of Double Taxation Agreement entered into by the Government of India with the country of residence of the Overseas Depositary Bank will be applicable in the matter of taxation of income from dividends from underlying shares and interest on Foreign Currency Convertible Bonds.

(2) During the period, if any, when the redeemed underlying shares are held by the non-resident investor on transfer from fiduciary ownership of the Overseas Depositary Bank, before they are sold to resident purchasers, the Avoidance of Double Taxation Agreement entered into by the Government of India with the country of residence of the non-resident investor will be applicable

in the matter of taxation of income from the dividends from the said underlying shares, or interest on Foreign Currency Convertible Bonds, or any capital gain arising out of transfer of underlying shares.

11. Gift-tax and wealth-tax :-

The holding of the depositary receipts in the hands of non-resident investors and the holding of the underlying shares by the Overseas Depositary Bank in a fiduciary capacity and the transfer of the Global Depository Receipts between non-resident investors and the Overseas Depositary Bank shall be exempt from wealth-tax under Wealth-tax Act, 1957, and from gift-tax under Gift-tax Act, 1958. Additional information to be filed by companies applying for permission to float global issues

1. Name of the Company and Address for Communication.

2. Existing Business.

3. Profile on Proposed Expansion/Diversification Project with breakup requirements of Rupee and F.E. Components.

4. Existing Resources

5. Fixed Assets

I.

(i) Gross Block

(ii) Additions and Accretions during the year

(iii) Depreciation

(iv) Net Block

II. Work in Progress

6.(i)Sales and Other income \ \ \ \Year ending in March (ii)Operating Expenses \ \ \ ______________________ (iii)Interest on Loans \ \ \ \1993 \1992 \1991 \ \ (iv)Profit belore Depreciation \ \ ______________________ (v)Depreciation (vi)Profit before Tax (vii)Provision for Taxation (viii)Profit before Appropriations (ix)ividend and other appropriations (x)Profit Transferred to General Reserves __________________________

7. Capacity and Utilisation

12. Salient features of the prospective corporate plans and

diversification proposals with special reference to foreign exchange requirements. \ \Format of Approval for Finalising the Issue Structure \ \ \ \Government of India \ \Ministry of Finance, Department of Economic Affairs \ \ \ \(Investment Division) \ \ \ \ \New Delhi \ \ \ \ \ \ \Dated the .... To M/s.................. .... Subject: Your Application for a GDR/ADR/IDR issue for an amount of ..... Dear Sir, I am directed to refer to your Letter No. .... dated .... on the subject mentioned above and to convey Government of India's approval in principle' to the mobilisation of foreign currency resources equivalent to .... through issue of GDR/ADR/IDRs to cover the ForeignCurrency needs for your .... projects and other related corporate needs. 2. The approval is subject to the understanding that the foreign currency resources raised through the proposed issue should be mandatorily remitted to India immediately after the issue. 3. This approval is valid fora period of six months from the date of issue of this letter. 4. You are now requested to finalise the detailed parameters of the proposed GDR/ADR/IDRs offering for consideration and final approval by the Government of India. \ \ \ \ \ \ \ \ \Yours faithfully, \ \ \ \ \ \ \ \ \ \( ) \ \ \ \ \ \ \ \Director (Foreign Investments) \Indicative items of final approval for Foreign Currency \ \ \ \Convertible Bonds Issues Issuer Lead Manager Co. Lead Manager(s) Principal Amount Currency Issue price (and premium, if any) Coupon (and payment dates) Conversion Premium Maturity Listing of Bonds Optional Redemption by Issuer (Call) Optional Redemption by Investor (Put) Form and Denomination Status Cross Default Provisions Negative Pledge Provisions Taxation Commissions Reimbursible Expenses Governing Laws \Indicative items in the final approval for Euro-Equity Issues \ \ \through GDR Mechanism Issuer Lead Manager Co. Lead Manager(s) Overseas Depository Institution Indian Custodian Issue Structure and Denomination (No. of underlying shares represented by the GDRs). Issue Amount (Principal amount) Greenshoe Option (Additional amount in % terms which may be retained, if offered) Warrants attached, if any Currency of issue G.D.R. Listing Underlying Shares Listing Standstill period (No further equity shares, or interests in equity shares, for a specified time period from the date of issue) Trading provision Settlement provisions Selling Commission Underwriting Commission and Management Fees Legal Expenses, Printing Expenses, Depository Fees, and other out of pocket expenses. Taxation Governing Laws.