

Companies (Issue of Indian Depository Receipts) Rules, 2004

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SCHEDULE 1 :- Matters to be specified in the Prospectus

Companies (Issue of Indian Depository Receipts) Rules, 2004

In exercise of powers conferred by clause (a) of sub-section (1) of section 642 read with section 605A of the Companies Act, 1956, the Central Government hereby makes the following rules, namely :-

1. Short Title and Commencement :-

(i) These Rules may be called the Companies (Issue of Indian Depository Receipts) Rules, 2004.

(ii) They shall come into force from the date of their notification in the Official Gazette.

2. Applicability :-

These rules shall apply only to those companies incorporated outside India, whether they have or have not established any place of business in India.

3. Definitions :-

(i)

(a) "Chief Accounts Officer" means the chief accounts and financial officer of a company, by whatever name known;

(b) "Depository" means a depository as defined in clause (e) of sub-section (1) of s.2 of Depositories Act, 1996;

(c) "Domestic Depository" means custodian of securities registered with the Securities and Exchange Board of India, hereinafter referred to as SEBI and authorised by the issuing company to issue Indian Depository Receipts;

(d) "Indian Depository Receipt" (hereinafter referred to as "IDR") means any instrument in the form of a depository receipt created by Domestic Depository in India against the underlying equity shares of issuing company;

(e) "Issuing company" means a company incorporated outside India, making an issue of IDRs through a domestic depository;

(f) "Merchant Banker" means a Merchant Banker as defined in clause (e) of Rule 2 of SEBI (Merchant Bankers) Rules, 1992;

(g) "Overseas Custodian Bank" means a banking company which is established in a country outside India and has a place of business in India and acts as custodian for the equity shares of issuing company against which IDRs are proposed to be issued after having obtained permission from Ministry of Finance for doing such business in India;

(h) "SEBI" means the Securities and Exchange Board of India established under the Securities and Exchange Board of India Act, 1992.

(ii) The words and expressions used herein and not defined, but defined in the Companies Act, 1956 (1 of 1956), Income-tax Act, 1961 (43 of 1961), the Securities and Exchange Board of India Act, 1992 (15 of 1992) or the Depositories Act, 1996 (22 of 1996) or the Rules and Regulations framed under these Acts, shall have the meaning respectively assigned to them in the respective Acts.

4. Eligibility for issue of IDRs :-

1 Without prejudice to the provisions of the Securities and Exchange Board of India Act, 1992, an issuing company shall not

issue IDRs unless it satisfies the following conditions, namely:-

(a) its pre-issue paid-up capital and free reserves are at least US\$ 50 million and it has a minimum average market capitalization (during the last 3 years) in its parent country of at least US\$ 100 million;

(b) it has a continuous trading record or history on a stock exchange in its parent country for at least three immediately preceding years;

(c) it has a track record of distributable profits in terms of section 205 of the Companies Act, 1956, for at least three out of immediately preceding five years;

(d) it fulfills such other eligibility criteria as may be laid down by Securities and Exchange Board of India (SEBI) from time to time in this behalf.

In the Rule 4 shall be substituted, in place of :- [4. Eligibility for issue of IDRs:- Without prejudice to anything contained in the Securities and Exchange Board of India Act, 1992, an issuing company may issue IDRs only if it satisfies the following conditions:- (a) Its pre-issue paid-up capital and free reserves are at least US\$ 100 millions and it has had an average turnover of US\$ 500 million during the 3 financial years preceding the issue. (b) It has been making profits for at least five years preceding the issue and has been declaring dividend of not less than 10% each year for the said period. (c) Its pre-issue debt equity ratio is not more than 2:1. (d) It shall fulfill the eligibility criteria laid down by SEBI from time to time in this behalf.] by the Companies (Issue of Indian Depository Receipts) (Amendment) Rules, 2007;

5. Procedure for making an issue of IDRs :-

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(1)

(i) No issuing company shall raise funds in India by issuing IDRs unless it has obtained prior written approval from SEBI on an application made in this behalf;

(ii) An application under clause (i) shall be made to the SEBI (alongwith draft prospectus or draft letter of offer) at least 90 days prior to the opening date of the IDRs issue, in such form and furnishing such information as may be specified by SEBI from time to time, with a non-refundable fee of US \$10,000 payable to SEBI;

Provided that if within 60 days from the date of submission of

application or draft prospectus or letter of offer, SEBI specifies any changes to be made in the draft prospectus or letter of offer, the prospectus or letter of offer shall not be filed with the SEBI or Registrar of Companies unless such changes have been incorporated therein.

(iv) The issuing company shall also file with SEBI, through a merchant banker, a due diligence report alongwith draft prospectus or letter of offer in the form specified by SEBI;

(v) The issuing company shall on approval being granted by SEBI to an application under clause (ii), pay to SEBI an issue fee of half a percent of the issue value subject to a minimum of Rs.10 lakhs where the issue is upto Rs.100 crore in Indian rupees:

Provided further where the issue value exceeds Rs.100 crore, every additional value of issue shall be subject to a fee of 0.25 percent of the issue value.

(2)

(i) The issuing company shall, where required, obtain the necessary approvals or exemption from the appropriate authorities from the country of its incorporation under the relevant laws relating to issue of capital;

(ii) The issuing company shall appoint an overseas custodian bank, a domestic depository and a merchant banker for the purpose of issue of IDRs;

(iii) The issuing company shall deliver the underlying equity shares or cause them to be delivered to an Overseas Custodian Bank and the said bank shall authorize the domestic depository to issue IDRs;

(iv) The issuing company, shall obtain in-principle listing permission from one or more stock exchanges having nation wide trading terminals in India;

(v) The issuing company may appoint underwriters registered with SEBI to underwrite the issue of IDRs;

(vi) The issuing company shall file a prospectus or letter of offer, as the case may be, certified by two authorized signatories of the issuing company, one of whom shall be a whole-time director and other the Chief Accounts Officer, stating the particulars of the

resolution of the Board by which it was approved, with the SEBI and Registrar of Companies, New Delhi, before such issue:

Provided that at the time of filing of said prospectus or letter of offer with the Registrar of Companies, New Delhi, a copy of approval granted by SEBI and the statement of fees paid by the Issuing Company to SEBI shall also be attached."

In the Rule 5 shall be substituted, in place of :- [5.Procedure for making an issue of IDRs.- (i) \a) No issuing company shall raise funds in India by issuing IDRs unless it has obtained prior permission from the SEBI. (b) An application seeking permission under clause (a) shall be made to the SEBI at least 90 days prior to the opening date of the issue, in such form furnishing such information as may be notified from time to time with a non-refundable fee of US \$10,000: Provided that, on permission being granted, an applicant shall pay an issue fee of half a percent of the issue value subject to a minimum of Rs. 10 lakhs where the issue is upto Rs. 100 crore in Indian rupees; Provided further where the issue value exceeds Rs. 100 crore, every additional value of issue shall be subject to a fee of 0.25 percent of the issue value. (c) The SEBI may, on receipt of an application, seeking permission under clause (a), call for such further information, and explanations, as may be necessary, for disposal of such application. (d) The issuing company shall obtain the necessary approvals or exemption from the appropriate authorities from the country of its incorporation under the relevant laws relating to issue of capital, where required. (e) The issuing company shall appoint an overseas custodian bank, a domestic depository and a merchant banker for the purpose of issue of IDRs. (f) The issuing company shall deliver the underlying equity shares or cause them to be delivered to an Overseas Custodian Bank and the said bank shall authorize the domestic depository to issue IDRs. (g) (i)The issuing company shall file through a merchant banker or the domestic depository a due diligence report with the Registrar and with SEBI in the form specified. (ii) \a) The issuing company shall, through a merchant Banker file a prospectus or letter of offer certified by two authorized signatories of the issuing company, one of whom shall be a whole-time director and other the Chief Accounts Officer, stating the particulars of the resolution of the Board by which it was approved, with the SEBI and Registrar of Companies, New Delhi, before such issue. (b) The draft prospectus or draft letter of offer shall be filed with SEBI, through the merchant banker, at least 21 days prior to the filing under clause (a). Provided that if within 21 days from the date of submission of draft prospectus or letter of offer, SEBI specifies any changes to be made therein, the prospectus shall not be filed with the SEBI/Registrar of Companies unless such changes have been incorporated therein, (iii) The issuing company, seeking permission under sub-rule (i) above, shall

obtain in-principle listing permission from one or more stock exchanges having nation wide trading terminals in India. (iv) The issuing company may appoint underwriters registered with SEBI to underwrite the issue of IDRs.] by the Companies (Issue of Indian Depository Receipts) (Amendment) Rules, 2007;

6. Other conditions for the issue of IDRs :-

(i) The repatriation of the proceeds of issue of IDRs shall be subject to laws for the time being in force relating to export of foreign exchange.

(ii) IDRs shall not be redeemable into the underlying equity shares before the expiry of one year period from the date of the issue of the IDRs.

1 "(iii) The number of underlying equity shares offered in a financial year through IDR offerings shall not exceed 25 per cent of the post issue number of equity shares of the company."

(iv) Notwithstanding the denomination of securities of an issuing company, the IDRs issued by it shall be denominated in Indian Rupees.

In the Rule 6, for sub-rule (iii) substituted, in place of :- [(iii) IDRs issued by any issuing company in any financial year shall not exceed 15 per cent of its paid-up capital and free reserves.] by the Companies (Issue of Indian Depository Receipts) (Amendment) Rules, 2007;

7. Registration of documents :-

(i) The Merchant Banker to the issue of IDRs shall deliver for registration the following documents or information to the SEBI and Registrar of Companies at New Delhi, namely:-

(a) instrument constituting or defining the constitution of the issuing company;

(b) the enactments or provisions having the force of law by or under which the incorporation of the issuing company was effected, a copy of such provisions attested by an officer of the company be annexed;

(c) if the issuing company has established place of business in India, address of its principal office in India;

(d) if the issuing company does not establish principal place of business in India, an address in India where the said instrument,

enactments or provision or copies thereof are available for public inspection, and if these are not in English, a translation thereof certified by a responsible officer of the issuing company shall be kept for public inspection;

(e) a certified copy of the certificate of incorporation of the issuing company in the country in which it is incorporated;

(f) copies of the agreements entered into between the issuing company, the overseas custodian bank, the domestic depository, which shall inter alia specify the rights to be passed on to the IDR holders;

(g) if any document or any portion thereof required to be filed with the SEBI/ Registrar of Companies is not in English language, a translation of that document or portion thereof in English, certified by a responsible officer of the company to be correct and attested by an authorised officer of the Embassy or Consulate of that country in India, shall be attached to each copy of the document.

(ii) The prospectus to be filed with the SEBI and Registrar ¹ [of Companies, New Delhi] under clause (ii) of rule 5 shall contain the particulars as prescribed in Schedule and shall be signed by all the whole-time directors of the issuing company and by the Chief Accounts Officer.

In the Rule 7, in sub-rule (ii), after the word "Registrar", the words "of Companies, New Delhi" shall be inserted, by the Companies (Issue of Indian Depository Receipts) (Amendment) Rules, 2007;

8. Conditions for the issue of prospectus and application :-

(i) No application form for the securities of the issuing company shall be issued unless the form is accompanied by a memorandum containing the salient features of prospectus in the specified form.

(ii) An application form can be issued without the memorandum as specified in clause (i) above if it is issued in connection with an invitation to enter into an underwriting agreement with respect to the IDRs.

(iii) The prospectus for subscription of IDRs of the issuing company which includes a statement purporting to be made by an expert shall not be circulated, issued or distributed in India or abroad unless a statement that the expert has given his written consent to the issue thereof and has not withdrawn such consent before the

delivery of a copy of the prospectus to the SEBI and Registrar of Companies, New Delhi, appears on the prospectus.

(iv) The person(s) responsible for issue of the prospectus shall not incur any liability by reason of any non-compliance with or contravention of any provision of this rule, if-

(a) as regards any matter not disclosed, he proves that he had no knowledge thereof; or

(b) the contravention arose in respect of such matters which in the opinion of the Central Government were not material.

9. Listing of Indian Depository Receipt :-

The IDRs issued under this Rule shall be listed on the recognized Sk Exchange(s) in India as specified in clause (iii) of rule 5 and such IDRs may be purchased, possessed and freely transferred by a person resident in India as defined in s.2(v) of Foreign Exchange Management Act, 1999, subject to the provisions of the said Act.

10. Procedure for transfer and redemption :-

(i) A resident holder of IDRs may transfer the IDRs or may ask the Domestic Depository to redeem these IDRs, subject to the provisions of the Foreign Exchange Management Act, 1999 and other laws for the time being in force.

(ii) In case of redemption, Domestic Depository shall request the Overseas Custodian Bank to get the corresponding underlying equity shares released in favour of the Indian resident for being sold directly on behalf of Indian resident, or being transferred in the books of issuing company in the name of Indian resident and a copy of such request shall be sent to the issuing company for information.

(iii) A holder of IDRs may, at any time, nominate a person to whom his IDRs shall vest in the event of his death and Form No: 1 annexed to these rules may be used for this purpose.

11. Continuous Disclosure Requirements :-

(i) The Issuing company shall furnish to the Overseas Custodian Bank and Domestic Depository, a certificate obtained by it from the statutory auditor of the company or a Chartered Accountant about utilization of funds and its variation from the projections of utilization of funds made in the prospectus, if any, in quarterly

intervals and shall also publish it or cause to be published in one of the English language newspapers having wide circulation in India.

1 (ii) The quarterly audited results or unaudited results subjected to limited review by the auditors of the company, as the case may be, and approved by the Board of Directors of the issuing company shall be prepared and published in the manner specified in the listing conditions.

In the Rule 11, for sub-rule (ii) shall be substituted, in place of :- [(ii) The quarterly audited financial results should be prepared and published in newspapers in the manner specified by the listing conditions.] by the Companies (Issue of Indian Depository Receipts) (Amendment) Rules, 2007;

12. Distribution of corporate benefits :-

On the receipt of dividend or other corporate action on the IDRs as specified in the agreements between the issuing company and the Domestic Depository, the Domestic Depository shall distribute them to the IDR holders in proportion to their holdings of IDRs.

13. Penalty :-

1 If an Issuing company or any other person contravenes any provision of these rules for which no punishment is provided in the Act, the issuing company shall be punishable with the fine which may extend to twice the amount of the IDR issue and where the contravention is a continuing one, with a further fine which may extend to five thousand rupees for every day during which the contravention continues and every officer of the company who is in default or such other person shall be punishable with the fine which may extend to one lakh rupees and where the contravention is a continuing one, with a further fine which may extend to one thousand rupees for every day, during which such contravention continues.

In the rule 13, shall be substituted, in place of :- [13.Penalty.- If a company or any other person contravenes any provision of these rules for which no punishment is provided in the Act, the company and every officer of the company who is in default or such other person shall be punishable with the fine which may extend to twice the amount of the IDR issue and where the contravention is a continuing one, with a further fine which may extend to five thousand rupees for every day, during Which the contravention continues.] by the Companies (Issue of Indian Depository Receipts) (Amendment) Rules, 2007;

14. Repeal and savings :-

On the commencement of these rules, all rules, orders or directions in force in relation to any matter for which provisions are made in these rules shall stand repealed, except as respects things done or omitted to be done before such repeal.

15. Power of Central Government to decide certain Questions :-

If any question arises on the applicability and interpretation, such question shall be decided by the Central Government.

SCHEDULE 1

Matters to be specified in the Prospectus