

**General Circular No: 1 /2009**

No.17/67/2009 CL-V  
Government of India  
Ministry of Corporate Affairs

5<sup>th</sup> Floor, A -Wing, Shastri Bhavan,  
Dr. R.P.Road, New Delhi  
Dated: 16<sup>th</sup> June 2009.

To

All Regional Directors,  
All Registrar of Companies.

Subject: **Status of a holder of Global Depository Receipts (GDRs) -  
Clarification regarding**

Sir,

A question has arisen whether a non-resident holder of Global Depository Receipts is a member of the issuing company within the meaning of section 41 and 42 of the Companies Act, 1956.

2. 'Global Depository Receipts' (GDRs) has been defined under the Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 ("the Scheme"), as "an instrument in the form a depository receipt or certificate (by whatever name it is called) created by the overseas depository bank outside India and issued to non resident investors against the issue of ordinary shares or foreign currency convertible bonds of issuing company".

3. As per the Scheme issued by Department of Economic Affairs (DEA) in 1993, -

- (i) A Global Depository Receipt may be issued for one or more underlying shares or bonds held with the Domestic Custodian Bank.
- (ii) 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 Depository Bank to issue Global Depository Receipt or Certificate to non-resident investors against the shares or bonds held by the Domestic Custodian Bank.
- (iii) A non-resident holder of Global Depository Receipts may transfer those receipts, or may ask the Overseas Depository Bank to redeem

those receipts. In the case of redemption, Overseas Depository 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.

4. "Overseas Depository Bank" has been defined in the "Scheme", means "a bank authorized by the issuing company to issue global depository receipts against issue of Foreign Currency Convertible Bonds or ordinary shares of the issuing company". As per the Companies Act, 1956 "Depository" has the same meaning as in the Depository Act, 1996. The Depository Act, 1996, defines the term "Depository" means "a company formed and registered under the Companies Act, 1956 and has been granted certificate of registration under sub-section (1A) of section 12 of the Securities and Exchange Board of India Act, 1992.

5. Accordingly, it is hereby clarified that

- (a) As per section 41(1) & (2) of the Companies Act, a person is a member of the company, (i) who is a subscriber to the Memorandum or (ii) whose name has been entered in the register of members. Since, holder of Global Depository Receipts is neither the subscriber to the Memorandum nor a holder of the shares, his name cannot be entered in the Register of Members. Therefore, a holder of Global Depository Receipts cannot be called a member of the company.
- (b) As per section 41(3) of the Companies Act, 1956, a person holding a share capital of the company and whose name is entered as beneficial owner in the records of the depository, is deemed to be a member of the company. Since the Overseas Depository Bank as referred in the 'Scheme' is neither the Depository as defined in the Companies Act, 1956 and the Depository Act, 1996 nor holding the shares capital, therefore, it cannot be deemed to be a member of the company.
- (c) A holder of Global Depository Receipts may become a member of the company only on transfer/redemption of the GDR into underlying equity shares after following the procedure provided in the "Scheme"/provisions of the Companies Act, 1956.
- (d) Since the underlying shares are allotted in the name of Overseas Depository Bank, the name of such Overseas Depository Bank is to be entered in the Register of Members of the issuing company.

However, until transfer/redemption of such GDRs into underlying shares, Overseas Depository Bank cannot be considered a nominee of the holder of GDR for the purpose of section 42 read with section 41 of the Companies Act, 1956.

Yours faithfully,



(B N Harish)

Joint Director (Inspection)

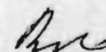
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Joint Director (Inspection)