

(Published in the Gazette of India Extraordinary Part II, section 3, sub-section (i))

MINISTRY OF CORPORATE AFFAIRS
NOTIFICATION

New Delhi, dated, the 11th July, 2007

G.S.R. 480(E).- 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 further to amend the Companies (Issue of Indian Depository Receipts) Rules, 2004, namely:-

1. (1) These Rules may be called the Companies (Issue of Indian Depository Receipts) (Amendment) Rules, 2007;
- (2) They shall come into force from the date of their notification in the Official Gazette.

2. In the Companies (Issue of Indian Depository Receipts) Rules, 2004, hereinafter referred to as the principal rules, for rule 4, the following shall be substituted, namely:-

“4. 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.

3. In the principal rules, for rule 5, the following shall be substituted, namely:-

“5(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;

(iii) SEBI may, within 30 days of receipt of an application under clause (ii), call for such further information, and explanations, as it may deem necessary, for disposal of such application and shall dispose the application within 60 days of its receipt:

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.”

4. In the principal rules, in rule 6, for sub-rule (iii) the following shall be substituted, namely:-

“(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.”

5. In the principal rules, in rule 7, in sub-rule (ii), after the word “Registrar”, the words “of Companies, New Delhi” shall be inserted.

6. In the principal rules, in rule 11, for sub-rule (ii) the following shall be substituted, namely:-

“(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.”

7. In the principal rules, for rule 13, the following shall be substituted, namely:-

“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.”

8. In the principal rules, in the Schedule, in para 5, -

(a) for sub-para (ii), the following shall be substituted, namely:-

“(ii) promoters and their background.

Provided that in case there are no identifiable promoters, the names, addresses and other particulars as may be specified by SEBI of all the persons who hold 5% or more equity share capital of the company shall be disclosed.”

(b) after sub-para (xi), the following shall be added, namely:-

“(xii) The information, as may be specified by SEBI, in respect of listing, trading record or history of the Issuing Company on all the stock exchanges, whether situated in its parent country or elsewhere.”

9. In the principal rules, in the Schedule, in para 6, in the sub-para (ii), for figure and word, “120 days”, the figure and the word “180 days” shall be substituted.

F.No.1/2/2001-C.L.-V

Jitesh Khosla; Joint Secretary

NOTE: The principal rules were published vide G.S.R. 131(E) dated 23.2.2004.