

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

MINISTRY OF CORPORATE AFFAIRS  
NOTIFICATION

New Delhi, dated, the 19<sup>th</sup> January, 2009.

G.S.R.35 (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, 2009.
  - (2) They shall come into force from the date of their publication in the Official Gazette.
2. In the Companies (Issue of Indian Depository Receipts) Rules, 2004, hereinafter referred to as the principal rules, in rule 3, in sub-rule (i), -
  - (A) clause (b) shall be deleted and clauses (c) to (h) shall be renumbered as clauses (b) to (g) respectively.
  - (B) for the renumbered clause (f), the following shall be substituted, namely:-

“(f) Overseas Custodian Bank” means a banking company which is established in a country outside India and which acts as custodian for the equity shares of Issuing Company, against which IDRs are proposed to be issued by having a custodial arrangement or agreement with the Domestic Depository or by establishing a place of business in India.”.
3. In the principal rules, in rule 5, -
  - (a) in sub-rule (1), in clause (ii), the words ‘or draft letter of offer’ shall be omitted;
  - (b) in sub-rule (1), in the proviso to clause (iii), the words ‘or letter of offer’ wherever occurring shall be omitted;
  - (c) in sub-rule (1), in clause (iv), the words ‘or letter of offer’ shall be omitted;

(d) in sub-rule (2), in clause (vi), the words ‘or letter of offer, as the case may be,’ shall be omitted;

(e) in sub-rule (2), in proviso to clause (vi), the words ‘or letter of offer’ shall be omitted.

4. In the principal rules, in rule 6 -

(a) sub-rule (ii) shall be deleted;

(b) sub-rule (iii) and sub-rule (iv) shall be renumbered as sub-rule (ii) and sub-rule (iii) respectively.

5. In the principal rules, in rule 7, in sub-rule (ii), for the words, figures and bracket “under clause (ii) of rule 5”, the words, figures and bracket “under clause (vi) of sub-rule (2) of rule 5” shall be substituted.

6. In the principal rules, in rule 9,-

(a) for the words, figures and bracket “in clause (iii) of rule 5”, the words, figures and bracket “in clause (iv) of sub-rule (2) of rule 5” shall be substituted;

(b) the following proviso shall be added:-

“Provided that the IDRs issued by an issuing company may be purchased, possessed and transferred by a person other than a person resident in India if such Issuing Company obtains specific approval from Reserve Bank of India in this regard or complies with any policy or guidelines that may be issued by RBI on the subject matter.”.

7. In the principal rules, in rule 10,-

(a) in sub-rule (i), the word “resident” shall be omitted;

(b) in sub-rule (ii), for the words “Indian resident” wherever occurring, the words “holder of IDRs” shall be substituted.

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

“Every issuing company shall comply with such continuous disclosure requirements as may be specified by SEBI in this regard.”.

9. In the principal rules, in the Schedule, in para 6, -
- (a) for the sub-paragraphs (i) and (ii), the following shall be substituted, namely:-
- “(i) Where the law of a country, in which the Issuing company is incorporated, requires annual statutory audit of the accounts of the Issuing company, a report by the statutory auditor of the Issuing company, in such form as may be prescribed by SEBI on -
- (A) the audited financial statements and financial status of the Issuing Company in respect of three financial years immediately preceding the date of prospectus, and
- (B) the financial status of the company for the period between the last date of the period for which latest audited financial statements are made and the date of prospectus:

Provided that in case of an Issuing Company which is a foreign bank incorporated outside India and which is regulated by a Central Bank which, in turn, is a member of Bank for International Settlements, the requirement under this paragraph, in respect of period beginning with last date of period for which the latest audited financial statements are made and the date of prospectus shall be satisfied, if the relevant financial statements are based on limited review report of such statutory auditor.

(ii) Where the law of the country, in which the Issuing company is incorporated, does not require annual statutory audit of the accounts of the Issuing company, a report, in such form as may be specified by SEBI, certified by a Chartered Accountant in practice within the terms and meaning of the Chartered Accountant Act, 1949 on -

- (A) the financial affairs of the Issuing Company, in particular on the profits and losses for each of the three financial years immediately preceding the date of prospectus and upon the assets and liabilities of the Issuing Company and

(B) the financial status of the company for the period between the last date of the period for which the latest financial statements are made and the date of prospectus.

(iii) In case of both sub-paragraphs (i) and (ii) of this paragraph, the gap between date of opening of issue and date of reports under the said sub-paragraphs shall not exceed 120 days.”.

(b) the sub-paragraph (iii) shall be re-numbered as sub-paragraph (iv) and for clause (b) of renumbered sub-paragraph (iv), the following shall be substituted, namely:-

“(b) The reports stated in sub-paragraphs (i) and (ii), as the case may be, in respect of such body(ies) corporate also.” .

[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 23.02.2004 and amended vide GSR 480(E) dated 11.07.2007.