

company under the Act and rules made thereunder, shall be liable for investigation under section 210 of the Act and action consequent upon that investigation shall be taken against that person.

13. Issue of Indian Depository Receipts (IDRs).- (1) For the purposes of section 390, no company incorporated or to be incorporated outside India, whether the company has or has not established, or may or may not establish, any place of business in India (hereinafter in this rule called 'issuing company') shall make an issue of Indian Depository Receipts (IDRs) unless such company complies with the conditions mentioned under this rule, in addition to the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 and any directions issued by the Reserve Bank of India.

Explanation.- For the purposes of this rule, the term "Indian Depository Receipt" (hereinafter referred to as 'IDR') means any instrument in the form of a depository receipt created by a Domestic Depository in India and authorized by a company incorporated outside India making an issue of such depository receipts.

(2) The issuing company shall not issue IDRs unless-

- (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 three years) in its parent country of at least US\$ 100 million;
- (b) it has been continuously trading on a stock exchange in its parent or home country (the country of incorporation of such company) for at least three immediately preceding years;
- (c) it has a track record of distributable profits in terms of section 123 of the Act, for at least three out of immediately preceding five years;
- (d) It fulfills such other eligibility criteria as may be laid down by the Securities and Exchange Board of India from time to time in this behalf.

(3) The issuing company shall follow the following procedure for making an issue of IDRs:

- (a) the issuing company shall, where required, obtain the necessary approvals or exemptions from the appropriate authorities from the country of its incorporation under the relevant laws relating to issue of capital and IDRs.
- (b) issuing company shall obtain prior written approval from the Securities and Exchange Board of India on an application made in this behalf for issue of IDRs along with the issue size.
- (c) an application under clause (b) shall be made to the Securities and Exchange Board of India (along with draft prospectus) at least ninety days prior to the opening date of the IDRs issue, in such form, along with such fee and furnishing such information as may be specified by the Securities and Exchange Board of India from time to time:

Provided that the issuing company shall also file with the Securities and Exchange Board of India, through a Merchant Banker, a due diligence report along with the application under clause (b) in the form specified by the Securities and Exchange Board of India.

- (d) the Securities and Exchange Board of India may, within a period of thirty days of receipt of an application under clause (c), call for such further information, and explanations, as it may deem necessary, for disposal of such application and shall dispose the application within a period of thirty days of receipt of further information or explanation:

Provided that if within a period of sixty days from the date of submission of application or draft prospectus, the Securities and Exchange Board of India specifies any changes to be made in the draft prospectus, the prospectus shall not be filed with the Securities and Exchange Board of India or Registrar of Companies unless such changes have been incorporated therein.

(e) the issuing company shall on approval being granted by the Securities and Exchange Board of India to an application under clause (b), pay to the Securities and Exchange Board of India an issue fee as may be prescribed from time to time by the Securities and Exchange Board of India.

(f) the issuing company shall file a prospectus, certified by two authorized signatories of the issuing company, one of whom shall be a whole-time director and other the Chief Financial Officer, stating the particulars of the resolution of the Board by which it was approved with the Securities and Exchange Board of India and Registrar of Companies, New Delhi before such issue:

Provided that at the time of filing of said prospectus with the Registrar of Companies, New Delhi, a copy of approval granted by the Securities and Exchange Board of India and the statement of fees paid by the Issuing Company to the Securities and Exchange Board of India shall also be attached.

(g) the prospectus to be filed with the Securities and Exchange Board of India and the Registrar of Companies, New Delhi shall contain the particulars as prescribed in sub-rule (8) and shall be signed by all the whole-time directors of the issuing company, and the Chief Financial Officer.

(h) the issuing company shall appoint an overseas custodian bank, a Domestic Depository and a Merchant Banker for the purpose of issue of IDRs.

(i) the issuing company may appoint underwriters registered with the Securities and Exchange Board of India to underwrite the issue of IDRs.

(j) 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.

(k) the issuing company shall obtain in-principle listing permission from one or more stock exchanges having nationwide trading terminals in India.

Explanation- For the purposes of this rule,-

(i) "Domestic Depository" means custodian of securities registered with the Securities and Exchange Board of India and authorized by the issuing company to issue IDRs.

(ii) "Merchant Banker" means a Merchant Banker as defined in sub-regulation (cb) of regulation 2 of the Securities and Exchange Board (Merchant Bankers) Regulations, 1992.

(iii) "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.

(4) The Merchant Banker to the issue of IDRs shall deliver for registration the following documents or information to the Securities and Exchange Board of India 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 a 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 key managerial personnel 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) the 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 Securities and Exchange Board of India or the Registrar of Companies is not in English language, a translation of that document or portion thereof in English, certified by a key managerial personnel of the company to be correct and attested by an authorized officer of the Embassy or Consulate of that country in India, shall be attached to each copy of the document.

- (5) (a) 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.
- (b) An application form can be issued without the memorandum as specified in clause (a), if it is issued in connection with an invitation to enter into an underwriting agreement with respect to the IDRs.
- (c) 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 Securities and Exchange Board of India and the Registrar of Companies, New Delhi, appears on the prospectus.
- (d) The provisions of the Act shall apply for all liabilities for mis-statements in prospectus or punishment for fraudulently inducing persons to invest money in IDRs.
- (e) 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-

- (i) as regards any matter not disclosed, he proves that he had no knowledge thereof; or
- (ii) the contravention arose in respect of such matters which in the opinion of the Central Government or the Securities and Exchange Board of India were not material.

(6) (a) A holder of IDRs may transfer the IDRs, may ask the Domestic Depository to redeem them or any person may seek reissuance of IDRs by conversion of underlying equity shares, subject to the provisions of the Foreign Exchange Management Act, 1999, the Securities and Exchange Board of India Act, 1992, or the rules, regulations or guidelines issued under these Acts, or any other law for the time being in force;

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

(c) 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 FC-5 may be used for this purpose.

(7) (a) 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.

(b) The number of underlying equity shares offered in a financial year through IDR offerings shall not exceed twenty five per cent of the post issue number of equity shares of the company.

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

(d) The IDRs issued under this Rule shall be listed on the recognized Stock Exchange(s) in India as specified in clause (k) of sub-rule (3) and such IDRs may be purchased, possessed and freely transferred by a person resident in India as defined in section 2(v) of the Foreign Exchange Management Act, 1999, subject to the provisions of the said Act:

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 Reserve Bank of India on the subject matter;

(e) Every issuing company shall comply with such continuous disclosure requirements as may be specified by the Securities and Exchange Board of India in this regard.

(f) 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.

(8) The prospectus or letter of offer shall, inter alia, contain the following particulars, namely:-

(a) General information-

- (i) Name and address of the registered office of the company;

(ii) name and address of the Domestic Depository, the Overseas Custodian Bank with the address of its office in India, the Merchant Banker, the underwriter to the issue and any other intermediary which may be appointed in connection with the issue of IDRs;

(iii) names and addresses of Stock Exchanges where applications are made or proposed to be made for listing of the IDRs;

(iv) the provisions relating to punishment for fictitious applications;

(v) statement or declaration for refund of excess subscription;

(vi) declaration about issue of allotment letters or certificates or IDRs within the stipulated period;

(vii) date of opening of issue;

(viii) date of closing of issue;

(ix) date of earliest closing of the issue;

(x) declaration by the Merchant Banker with regard to adequacy of resources of underwriters to discharge their respective obligations, in case of being required to do so;

(xi) a statement by the Issuing company that all moneys received out of issue of IDRs shall be transferred to a separate domestic bank account, name and address of the bank and the nature and number of the account to which the amount shall be credited;

(xii) the details of proposed utilisation of the proceeds of the IDR issue.

(b) Capital Structure of the Company- The authorized, issued, subscribed and paid-up capital of the issuing company;

(c) Terms of the issue-

(i) rights of the IDR holders against the underlying securities;

(ii) details of availability of prospectus and forms, i.e., date, time, place etc;

(iii) amount and mode of payment seeking issue of IDRs; and

(iv) any special tax benefits for the Issuing company and holders of IDRs in India.

(d) Particulars of Issue-

(i) the objects of the issue;

(ii) the cost of the Project, if any; and

(iii) the means of financing the projects, if any including contribution by promoters.

(e) Company, Management and Project-

(i) the main objects, history and present business of the company;

(ii) the Promoters or parent group or owner group and their background:

Provided that in case there are no identifiable promoters, the names, addresses and other particulars as may be specified by the Securities and Exchange Board of India of all the persons who hold five percent. or more equity share capital of the company shall be disclosed;

- (iii) the subsidiaries of the company, if any;
- (iv) the particulars of the Management or Board (i.e. Name and complete address(es) of Directors, Manager, Managing Director or other principal officers of the company);
- (v) the location of the project, if any;
- (vi) the details of plant and machinery, infrastructure facilities, technology etc., where applicable;
- (vii) the schedule of implementation of project and progress made so far, if applicable;
- (viii) nature of product(s), consumer(s), industrial users;
- (ix) the particulars of legal, financial and other defaults, if any;
- (x) the risk factors to the issue as perceived; and
- (xi) consent of the Merchant Bankers, Overseas Custodian Bank, the Domestic Depository and all other intermediaries associated with the issue of IDRs.
- (xii) the information, as may be specified by the Securities and Exchange Board of India, 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.

(f) Report-

- (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 specified by the Securities and Exchange Board of India on -

(A) the audited financial statements of the Issuing company in respect of three financial years immediately preceding the date of prospectus;

(B) the interim audited financial statements in respect of the period ending on a date which is less than 180 days prior to the date of opening of the issue, if the gap between the ending date of the latest audited financial statements disclosed under clause (A) and the date of the opening of the issue is more than 180 days:

Provided that if the gap between such date of latest audited financial statements and the date of opening of issue is 180 days or less, the requirement under item (B) shall be deemed to be complied with, if a statement, as may be specified by the Securities and Exchange Board of India, in respect of material changes in the financial position of Issuing company for such gap is disclosed in the Prospectus:

Provided further that in case of an Issuing company which is a foreign bank incorporated outside India and which is regulated by a member of the Bank for International Settlements or a member of the International Organization of Securities Commissions which is a signatory to a Multilateral Memorandum of Understanding, 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 opening of the issue 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 the Securities And Exchange Board of India, certified by a Chartered Accountant in practice within the terms and meaning of the Chartered Accountants Act, 1949 on -

(A) the financial statements 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 interim financial statements in respect of the period ending on a date which is less than one hundred and eighty days prior to the date of opening of the issue have to be included in report, if the gap between the ending date of the latest financial statements disclosed under item (A) and the date of the opening of the issue is more than one hundred and eighty days:

Provided that if the gap between such date of latest audited financial statements and the date of opening of issue is one hundred and eighty days or less, the requirement under item (B) shall be deemed to be complied with if a statement, as may be specified by the Securities And Exchange Board of India, in respect of changes in the financial position of Issuing company for such gap is disclosed in the Prospectus.

(iii) the gap between date of opening of issue and date of reports specified under sub-clauses (i) and (ii) shall not exceed one hundred and twenty days;

(iv) If the proceeds of the IDR issue are used for investing in other body(ies) corporate, then following details of such body(ies) corporate shall be given-

(A) the Name and address(es) of the bodies corporate;

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

(g) Other Information-

(i) the Minimum subscription for the issue;

(ii) the fees and expenses payable to the intermediaries involved in the issue of IDRs;

(iii) the declaration with regard to compliance with the Foreign Exchange Management Act, 1999.

(h) Inspection of Documents-

The Place at which inspection of the offer documents, the financial statements and auditor's report thereof shall be allowed during the normal business hours; and

(i) any other information as specified by the Securities and Exchange Board of India or the Income-tax Authorities or the Reserve Bank of India or other regulatory authorities from time to time.