

SECURITIES LAWS AND COMPLIANCES

PART B — ISSUE MANAGEMENT AND COMPLIANCES

STUDY XVII - INDIAN DEPOSITORY RECEIPTS

LEARNING OBJECTIVES

The study will enable the students to understand

- Concept of Indian Depository Receipts
- Over view of Companies (Issue of Indian Depository Receipts) Rules, 2004
- Guidelines under chapter VI A of SEBI (DIP) Guidelines, 2000
- Procedures for making an issue of Indian Depository Receipts
- Listing compliances for issuance of Indian Depository Receipts under listing agreement

INTRODUCTION

Indian Depository Receipt means any instrument in the form of a depository receipt created by Domestic Depository in India against the underlying equity shares of issuing company.

“Domestic Depository” means custodian of securities registered with SEBI and authorised by the issuing company to issue Indian Depository Receipts.

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.

I. COMPANIES (ISSUE OF INDIAN DEPOSITORY RECEIPTS) RULES, 2004

The Central Government vide its powers conferred by clause (a) of sub-section (1) of section 642 read with section 605A of the Companies Act, 1956, notified Companies (Issue of Indian Depository Receipts) Rules, 2004. These rules are applicable only to those companies incorporated outside India, whether they have or have not established any place of business in India.

Important definitions

- a. “Chief Accounts Officer” under these rules 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 section 2 of Depositories Act, 1996;
- c. “Issuing company” means a company incorporated outside India, making an issue of IDRs through a domestic depository;
- d. “Merchant Banker” means a Merchant Banker as defined in clause (e) of Rule 2 of SEBI (Merchant Bankers) Rules, 1992;

Eligibility for issue of IDRs

An issuing company can issue IDRs only if it satisfies the following conditions:

- i. 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.
- ii. 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.
- iii. Its pre-issue debt equity ratio is not more than 2:1.
- iv. It should fulfill the eligibility criteria laid down by SEBI from time to time.

Procedure for making an issue of IDRs

An issuing company cannot raise funds in India by issuing IDRs unless it has obtained prior permission from SEBI. An application for seeking permission should be made to the SEBI at least 90 days prior to the opening date of the issue in the notified manner along with a non-refundable fee of US \$10,000. After the permission being granted, an applicant has to 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. However 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. SEBI after the receipt of an application, seeking permission can also call for such further information, and explanations necessary for disposal of such application. The issuing company is required to obtain the necessary approvals or exemption from the appropriate authorities from the country of its incorporation and

also has to appoint an overseas custodian bank, a domestic depository and a merchant banker for the purpose of issue of IDRs. The issuing company can 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.

The issuing company has to file through a merchant banker or the domestic depository a due diligence report with the Registrar and also with SEBI. It is required to file a prospectus or letter of offer certified by two authorized signatories of the issuing company through a merchant banker, 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 SEBI and Registrar of Companies. The draft prospectus or draft letter of offer has to be filed with SEBI, through the merchant banker, at least 21 days prior to the filing of an application. 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 SEBI/Registrar of Companies unless such changes have been incorporated therein. The issuing company, seeking permission should obtain in-principle listing permission from one or more stock exchanges having nation wide trading terminals in India. The issuing company may appoint underwriters registered with SEBI to underwrite the issue of IDRs.

Other conditions for the issue of IDRs

The repatriation of the proceeds of issue of IDRs should be subject to laws for the time being in force relating to export of foreign exchange. It should not be redeemable into the underlying equity shares before the expiry of one-year period from the date of the issue of the IDRs. IDR issued by any issuing company in any financial year should not exceed 15 per cent of its paid-up capital and free reserves. The IDRs issued by the issuing company are required to be denominated in Indian Rupees.

Registration of documents

The Merchant Banker for the issue of IDRs is required to submit following documents or information to SEBI and

Registrar of Companies for registration namely:

- i. instrument constituting or defining the constitution of the issuing company.
- ii. the enactments or provisions having the force of law by or under which the incorporation of the issuing company was effected.
- iii. if the issuing company has established place of business in India, address of its principal office in India.
- iv. 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.
- v. a certified copy of the certificate of incorporation of the issuing company in the country in which it is incorporated;
- vi. copies of the agreements entered into between the issuing company, the overseas custodian bank and the domestic depository.
- vii. 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 is also required to be attached duly certified and attested by the responsible officer.

The prospectus filed with SEBI and Registrar should contain the particulars as prescribed and should be signed by all the whole-time directors of the issuing company and by the Chief Accounts Officer.

Conditions for the issue of prospectus and application

The application form for the securities of issuing company should not be issued unless the form is accompanied by a memorandum containing the salient features of prospectus in the specified form. An application form can be issued without the memorandum as specified, if it is issued in connection with an invitation to enter into an underwriting agreement with respect to the IDRs.

The prospectus for subscription of IDRs of the issuing company which includes a statement purporting to be made by an expert should 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 appears on the prospectus. The person(s) responsible for issue of the prospectus does not incur any liability by reason of any non-compliance with or contravention of any provision as regards any matter not disclosed, if he proves that he had no knowledge thereof or the contravention arose in respect of such matters which in the opinion of the Central Government were not material.

Listing of IDRs

The IDRs issued should be listed on the recognized Stock Exchange(s) in India as specified and such IDRs may be purchased, possessed and freely transferred by a person resident in India.

Procedure for transfer and redemption

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 whereas in case of redemption, Domestic Depository can 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. A holder of IDRs may, at any time, nominate a person to whom his IDRs shall vest in the event of his death.

Continuous Disclosure Requirements

The Issuing company should furnish 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 to the Overseas Custodian Bank and Domestic Depository. The quarterly audited financial results should be prepared and published in newspapers in the manner specified by the listing conditions.

Distribution of corporate benefits

After the receipt of dividend or other corporate action on the IDRs as specified in the agreements, the Domestic Depository has to distribute them to the IDR holders in proportion to their holdings of IDRs.

Penalty

If a company contravenes any provision of the rules, the company and every officer of the company who is in default or such other person is 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.

Disclosures

Disclosures of the following matters are to be specified in the prospectus—

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. Provisions relating to punishment for fictitious applications;
- v. Statement/declaration for refund of excess subscription;
- vi. Declaration about issue of allotment letters/certificates/ 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.

Capital Structure of the Company

Authorised, issued, subscribed and paid-up capital of the issuing company.

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.

Particulars of Issue

- i. Objects of the issue;
- ii. Cost of the Project, if any; and
- iii. Means of financing the projects, if any including contribution by promoters.

Company, Management and Project

- i. Main object, history and present business of the company;
- ii. promoters and their background;
- iii. subsidiaries of the company, if any;
- iv. particulars of the Management/Board (i.e. Name and complete address(es) of Directors, Manager, Managing Director or other principal officers of the company);
- v. location of the project, if any;
- vi. details of plant and machinery, infrastructure facilities, technology etc., where applicable;
- vii. schedule of implementation of project and progress made so far, if applicable;
- viii. nature of product(s), consumer(s), industrial users;
- ix. particulars of legal, financial and other defaults, if any;
- x. risk factors to the issue as perceived; and
- xi. consent of Merchant Bankers, overseas custodian bank, the domestic depository and all other intermediaries associated with the issue of IDRs.

Report

- i. Report of the statutory auditor on the financial results and financial status of the company up to a period not being more than 120 days before the opening of the issue, wherever statutory audit is required under the law of the country in which the issuing company is incorporated.
- ii. A report by domestic depository, as certified by an

Accountant who is member of Institute of Chartered Accountants of India holding certificate of practice, upon profits or losses of the issuing company for each of the five financial years immediately preceding the issue of prospectus and upon the assets and liabilities of the issuing company at the last date to which the accounts of the company were made in the specified form; provided that the gap between date of issue and date of report shall not be more than 120 days.

- iii. If the proceeds of the IDR issue are used for investing in other body(ies) corporate, then following details should be given:
 - a. Name and address(es) of the bodies corporate;
 - b. The reports stated in clause (a) above in respect of those bodies corporate also.

Other Information

- i. Minimum subscription for the issue.
- ii. Fees and expenses payable to the intermediaries involved in the issue of IDRs.

Inspection of Documents

The place at which inspection of the offer documents, the financial statements and auditor's report thereof will be allowed during the normal business hours.

Any other information as specified by SEBI from time to time.

Listing Agreement for IDRs.

II. SEBI (DISCLOSURE AND INVESTOR PROTECTION) GUIDELINES, 2000

Chapter VI A of SEBI (Disclosure of Investor Protection) Guidelines 2000 deal with issue of Indian Depository Receipts. The guidelines given in this Chapter are in addition to the provisions of the Companies (Issue of Indian Depository Receipts) Rules, 2004.

A. General Requirements

Eligibility for issue of IDRs

No issuer shall make an issue IDRs unless:

- i. it fulfils the eligibility criteria as specified in rule 4 of the IDR Rules;
- ii. it is listed in its home country;
- iii. it has not been prohibited to issue securities by any

- Regulatory Body; and
- iv. it has good track record with respect to compliance with securities market regulations.

Investors

1. NRIs and FIIs cannot purchase or possess IDRs unless special permission of the Reserve Bank of India is taken.
2. Investments by Indian companies in IDRs shall not exceed the investment limits, if any, prescribed for them under applicable laws.
3. Automatic fungibility of IDRs is not permitted.
4. In every issue of IDR—
 - i. At least 50% of the IDRs issued shall be subscribed to by QIBs;
 - ii. The balance 50% shall be available for subscription by non-institutional investors (i.e., investors other than QIBs and retail individual investors) and retail individual investors, including employees. IDRs shall be allocated among non institutional investors, retail individual investors and employees at the discretion of the issuer. The manner of allocation shall be disclosed in the prospectus for IDRs.
5. The minimum application amount in an IDR issue shall be Rs. 20,000.
6. Procedure to be followed by each class of applicant for applying shall be mentioned in the prospectus.

Minimum issue size

The size of an IDR issue shall not be less than Rs. 50 crores.

Minimum subscription

If the company issuing the IDRs does not receive the minimum subscription of 90 per cent of the issued amount on the date of closure of the issue, or if the subscription level falls below 90 per cent after the closure of issue on account of cheques having being returned unpaid or withdrawal of applications, the company shall forthwith refund the entire subscription amount received. If there is a delay beyond 8 days after the company becomes liable to pay the amount, the company shall pay interest at the rate of 15 per cent per annum for the period of delay.

B. Disclosures in a prospectus for IDRs

A prospectus for issue of IDRs shall contain all details as prescribed herein.

General instructions with respect to contents of the prospectus

1. The Merchant Banker has the option to file the draft prospectus as a public filing or a confidential filing. In both the cases, the initial fee as prescribed in [rule 5(1)(ii)] of the IDR Rules shall accompany such filing.
2. The contents of the prospectus including the financial statements of the issuer company, its subsidiaries and associates shall be in plain English.
“Associate” for the purpose is defined to mean “associate” as defined in Indian GAAP or IFRs or US GAAP in which the financial statements of the issuer are disclosed.
3. The prospectus shall contain all material information which shall be true and adequate so as to enable the investors to make informed decision on the investments in the issue.
4. The prospectus shall also contain the information and statements specified herein.
5. 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 or the Chief Financial Officer, stating the particulars of the resolution of the Board or the shareholders by which it was approved, with the SEBI and Registrar of Companies, New Delhi, before such issue. They shall also certify that all the disclosures made in the prospectus are true and correct.
6. The agreement made with the domestic depository shall also be furnished along with the prospectus.

Disclaimer

1. A disclaimer shall be made by the Merchant Banker including a due diligence certificate.
2. A statement will be made by the issuer disclaiming responsibility for statements made otherwise than in the prospectus, as follows:

“Our company, our directors and the Merchant Banker accept no responsibility for statements made otherwise than in the prospectus or in the advertisements or any other material issued by at our instance and anyone placing reliance on any other source of information including our website.....shall be doing so at his or her own risk.”

The issue

Summary of the terms of offer is required to be incorporated, including:

1. Offer and Listing Details
2. Plan of Distribution
3. Markets
4. Selling Shareholders, if any
5. Dilution
6. Expenses of the Issue

Forward looking statements

A paragraph on the statements that are forward looking statements and not matters of historical facts shall be incorporated. A statement on the sources of data used in the prospectus and their accuracy shall also be incorporated. A line is also be required incorporated on whether these have been independently verified.

General information

1. Definitions/terms used in the prospectus;
2. Name, address and contact information of the registered office of the company;
3. Name, address and contact information of the Domestic Depository, the Overseas Custodian Bank with the address of its office in India, the Merchant Banker, the Underwriter to the issue, Advisors to the issue and any other intermediary which may be appointed in connection with the issue of IDRs;
4. Interest of Experts and Counsel;
5. Name, address and contact information of the compliance officer in relation to the issue of IDRs. The compliance officer should be placed in India;
6. Name, address and contact information of Stock Exchanges where applications are made or proposed to

- be made for listing of the IDRs;
7. Disclosure about provisions relating to punishment for fictitious applications;
 8. Statement/declaration for refund of excess subscription;
 9. Statement that an interest of 15 per cent per annum would be paid to the investors if the allotment letters/refund orders are not dispatched within 30 days of the closure of the public issue;
 10. Declaration about issue of allotment letters/certificates/IDRs within the stipulated period;
 11. Date of opening of issue;
 12. Date of closing of issue;
 13. Method and Expected Timetable of the issue;
 14. A statement that subscription to the issue shall be kept open for at least 3 working days and not more than 10 working days;
 15. Date of earliest closing of the issue;
 16. 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;
 17. 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;
 18. Details of availability of prospectus and forms, i.e., date, time, place etc.;
 19. Amount and mode of payment seeking issue of IDRs;
 20. Disclosure on Investor Grievances and Redressal System :
 - a. The arrangements or any mechanism evolved by the company for redressal of investor grievances.
 - b. The past record (for a minimum period of 3 years before the date of the prospectus) of investor grievance redressal of the company and its listed subsidiaries/associates including details as to the time normally taken by it for disposal of various types of investor grievances.
 - c. That the company undertakes to subject itself to the

jurisdiction of Indian courts having jurisdiction over the place where the stock exchange is situated regarding grievances of the applicants for IDRs.

Risk factors and management perception, if any

1. Risk factors shall be disclosed as follows :
 - a. Risk factors associated with the company's business.
 - b. Risk factors associated with the country of the company proposing to issue IDRs.
 - c. Risk factors associated with the IDRs/underlying shares.
2. Risk factors shall be classified as those which are specific to the project and internal to the issuer company and those which are external and beyond the control of the issuer company.
3. Risk factors shall be determined on the basis of their materiality.
4. Materiality shall be decided taking the following factors into account:
 - a. Some events may not be material individually but may be found material collectively.
 - b. Some events may have material impact qualitatively instead of quantitatively.
 - c. Some events may not be material at present but may be having material impacts in future.
5. The risk factors shall appear in the prospectus in the following manner :
 - a. Risk envisaged by management.
 - b. Proposals, if any, to address the risks.
 - c. Any 'notes' required to be given prominence shall appear immediately after the risk factors.

Recent developments

Important events in the recent past (2 Financial Year preceding the issue) providing details of important developments on 3 key areas : Operations and Management, Shareholding patterns and Business Environment.

Market price information and other information concerning the shares in the domestic market of the issuer

1. Market price of shares for each quarter of the last three

- calendar years preceding the year of the issue of Prospectus. (High, Low, Average Daily Trading Volume)
2. Market price of shares for each month of the calendar year preceding the year of the issue of Prospectus. (High, Low, Average Daily Trading Volume)
 3. Market price of shares for the month preceding the date of Prospectus. (High, Low, Average Daily Trading Volume)
 4. The opening and closing price on the last day of the preceding month of the date of Prospectus along with the volume.
 5. This information should be provided, exchange-wise, if the securities are listed in more than one exchange.
 6. This information should be updated as on last available date before the date of prospectus.
 7. If it is a further issue of IDRs which are already listed in India, the above information should be given about such IDRs also.

Dividends

1. Dividend policy of the Company.
2. Rate of Dividend and Amount of Dividend paid for the last five financial years.
3. Regulatory framework in the Country of Incorporation/share listed concerning Dividends.
4. Details of Arrangement with the Depositories for payment of Dividend to the IDR holders.
5. Information about changes, if any, in dividends announced and dividends paid and time gap between the dividends announced and dividends paid.
6. Information about Dividend Yield.
7. Taxation aspects of dividend distribution.

Exchange rates

1. Brief history of the pattern of Exchange rates between the Country of Incorporation where shares are listed in India.
2. High, Low, Average Rates for the last five years.
3. High, Low, Average Rates for the last twelve months.

Foreign investment and exchange controls of the country of incorporation, where shares are listed

Information relating to the relevant foreign investment laws and exchange control regulations of the Country of

Incorporation or country where the underlying equity shares are listed.

Objects of the issue/use of proceeds

The following shall be disclosed :

1. purpose of the issue;
2. break-up of the cost of project for which the money is raised through the IDR issue;
3. the means of financing such project; and
4. proposed deployment status of the proceeds at each stage of the project.

Capitalisation statement

| | <i>Pre-issue as</i> |
|--------------------------|--------------------------------|
| | <i>(Figures in Rs. crores)</i> |
| Short-Term Debt | |
| Long Term Debt | |
| Shareholders Funds | |
| Share Capital | |
| Reserves | |
| Total Shareholders Funds | |
| Long Term Debt/Equity | |

Capital Structure

1. Authorised, issued, subscribed and paid up capital (Number of instruments, description, aggregate nominal value).
2. Size of present issue.
3. Paid-up Capital :
 - before the issue;
 - after the issue (if the IDR issue involves issue of fresh equity shares); and
 - share premium account (before and after the issue)
4. Detailed notes to Capital Structure

Capital Structure shall also contain details regarding holdings of major shareholders, i.e., the person or persons who are in over-all control of the company.

Financial Information

1. The audited consolidated or unconsolidated financial statements prepared in accordance with Indian GAAP or IFRS or US GAAP shall contain the following :

- a. Report of Independent Auditors on the Financial Statements
 - b. Balance Sheets
 - c. Statements of Income
 - d. Schedules to Accounts
 - e. Statements of Changes in Stockholders' Equity
 - f. Statements of Cash Flows
 - g. Statement of Accounting Policies
 - h. Notes of Financial Statements
 - i. Statement Relating to Subsidiary Companies (in case of unconsolidated financial statements).
2. Report of the statutory auditor on the financial results and financial status of the company for each of the five financial years immediately preceding the issue of prospectus including the profits or losses and assets and liabilities of the issuing company at the last date to which the accounts of the company were made in the specified form:
Provided that the gap between the date of issue and the date of report shall not be more than 180 days, wherever statutory audit is required under laws of the country where the issuer is incorporated.
- a. The above report needs to be stated in Indian Rupees in addition to home country currency and shall be prepared either in Indian GAAP (including all Accounting Standards issued by the Institute of Chartered Accountants of India) or with the International Financial Reporting Standards (IFRS) [including the International Accounting Standards (IAS)] or US GAAP, with a reconciliation statement vis-a-vis Indian GAAP. If the same is prepared according to IFRS or US GAAP, a paragraph on summary of significant differences between Indian GAAP and IFRS or Indian GAAP and US GAAP, as the case may be, shall also be incorporated.
 - b. Further, in case the report is prepared as per IFRS or US GAAP, the annual and quarterly financial results shall be audited by a professional accountant or certified public accountant or equivalent (by whatever name called in the issuer country), in accordance with the International Standards on Auditing (ISA). The auditor's report shall

also be prepared in accordance with the ISA.

- c. The above report needs to be stated on consolidated Basis or stand alone basis.
 - d. In case issuer country's accounting norms do not require a statutory Audit, such accounts shall be audited by a professional accountant or a certified public accountant.
3. A report by domestic depository, as certified by an Accountant who is member of Institute of Chartered Accountants of India holding certificate of practice, upon profits or losses of the issuing company for each of the five financial years immediately preceding the issue of prospectus and upon the assets and liabilities of the issuing company at the last date to which the accounts of the company were made in the specified form; provided that the gap between date of issue and date of report shall not be more than 2[180] days.
4. 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. Names and address(es) of the bodies corporate;
 - b. The reports as stated above in respect of those bodies corporate also.

5. Related Party transactions

6. Liquidity and Capital Resources

Statement on material developments subsequent to the date of the Last Financial Statements as disclosed in the prospectus

An statement by the directors whether in their opinion there have arisen any circumstances since the date of the last financial statements as disclosed in the prospectus any which materially and adversely affect or is likely to affect the trading or profitability of the company or the value of its assets, or its ability to pay its liabilities within the next twelve months, and if so, an outline of such circumstances and an assessment of their likely impact.

Management discussion and analysis of the financial statements (by comparing the recent financial year with the previous three financial years)

1. A summary of past financial results after adjustments as given in the auditors report for the past three years

containing significant items of income and expenditure shall be given.

2. Overview of the business of the issuer company.
3. Factors that may affect Results of the Operations.
4. An analysis of reasons for the changes in significant items of income and expenditure shall also be given, inter alia, containing the following :
 - a. unusual or infrequent events or transaction;
 - b. significant economic changes that material affected or are likely to effect income from continuing operations;
 - c. known trends or uncertainties that have had or are expected to have a material adverse impact on sales, revenue or incomes from continuing operations;
 - d. future changes in relationship between costs and revenues, in case of events such as future increase in labour or material costs or prices that will cause a material change are known;
 - e. the extent to which material increases in net sales or revenue are due to increased sales volume, introduction of new products or services or increased sales prices;
 - f. total turnover of each major industry segment in which the company operated;
 - g. status of any publicly announced new products or business segment;
 - h. the extent to which business is seasonal;
 - i. any significant dependence on a single or few suppliers or customers;
 - j. competitive conditions.

Industry and business overview

Market including details of the competition, past production figures for the industry, existing industry capacity, past trends and future prospects regarding exports (if applicable), demand and supply forecasts (if given, should be essentially with assumptions unless source from a market research agency of repute), etc. to be given. Source of data used shall be mentioned.

Details of the issuer

1. Main object, history and present business of the company;
2. Location of the project, if any;

3. Installed capacity and the details of plant and machinery, infrastructure facilities, technology etc., where applicable;
4. Schedule of implementation of project and progress made so far, if applicable;
5. Nature of product(s), consumer(s), industrial users;
6. Research and Development, Patents and Licenses, etc.;
7. Property, Plants and Equipment;
8. Particulars of financial and other defaults, if any;
9. Underwriting;
10. Experts;
11. Where you can find Additional Information;
12. Enforcement of Civil Liabilities against Foreign Persons.

Subsidiaries and Associates of the issuer

The following information for the last 3 years based on the audited statements in respect of subsidiaries and associates of the Issuing Company :

1. Date of Incorporation;
2. Nature of activities;
3. Equity Capital;
4. Reserves (excluding revaluation reserve);
5. Sales;
6. Profit After Tax (PAT);
7. Earnings Per Share (EPS); and
8. Net Asset Value (NAV);

If the subsidiaries and associates are not required to prepare such audited statements as per the laws prevailing in those countries, the same may be certified as true and correct by the Board of Directors and the management of such companies, provided a certificate from a certified public accountant or equivalent practicing in the concerned country is submitted to SEBI.

Management

1. Promoters and their background. If there are no identifiable promoters, details and background of all the persons who hold 5% or more equity share capital of the company.]
2. Details of the Board of Directors and the Key Managerial Personnel [i.e., Name, address(es) of Directors, Manager, Managing Director or other principal officers of the company, age, qualification, industry experience, other directorships].

3. Remuneration of the Directors and the Key managerial personnel with detailed breakup, sitting fees, their relation with promoters/controlling shareholder(s), if any, their equity holding in the company, duration of their association with the company.
4. Organisational Structure.
5. Board Practices.
6. Employees.

Securities Market of the country of incorporation where shares are listed

1. Brief History
2. Stock Exchange Regulation
3. Listing Regulations
4. Details of the Securities market regulator of the country of the issuer company
5. Whether the Securities market regulator of the country of the issuer company has signed any MoU with SEBI/IOSCO
6. Disclosure under the Companies Act and Securities Regulations (or equivalent thereof)
7. Stock Exchanges
8. Takeover Code/Buyback Code
9. Reforms in Some Key Sectors of the Economy
10. Restriction on Foreign Ownership of Securities
11. Overview of the Financial Sector
12. Nature of the Securities Trading Market in that country
13. A statement of how the enforcement of Indian Securities Laws would be affected by the fact that the issuer is located outside India.

Description of the Indian Depository Receipts and Rights of IDR Holders

1. Brief description of the Indian Depository Receipts.
2. Dividends, Other Distributions and Rights of IDR holders.
3. Voting rights and their manner of exercise by IDR holders, if any.
4. Record dates and how the same will be disclosed.
5. Reports and other communication to which the IDR holders will be entitled.
6. Conversion procedure of IDRs into shares.
7. Governing Law regarding various aspects of IDRs and

transactions therein.

Provisions regarding transfer of shares and depository receipts

1. Provisions regarding transfer of IDRs.
2. Outline of provisions regarding transfer of underlying shares after conversion.

Information relating to the depository - Indian & International

Brief details of the Domestic Depository, Overseas Custodian Bank and Depository Agreement.

Approvals of the Government/regulatory authorities

Information relating to statutory and regulatory approvals required in home country for the Issue and related aspects and their status, and approvals from Indian Regulatory authorities.

Taxation framework in India and the country of incorporation where shares are listed

Information relating to relevant provisions of Taxation law, Tax Treaties and their impact for IDR holders.

Outstanding litigations and defaults

1. Material litigation/liabilities/default including arrears/potential liabilities of the issuer, its promoters/controlling shareholders/directors and its subsidiaries and associates.
2. Materiality shall be determined on the basis of factors which are specific to the project and to the issuer, its promoters/controlling shareholders/directors, its subsidiaries and associates, which may have a bearing on the performance of the issuer company.

Materiality shall be decided taking the following factors into account :

- a. Some litigation/default may not be material individually but may be found material collectively.
- b. Some litigation/default may have material impact qualitatively instead of quantitatively.
- c. Some litigation/default may not be material at present but may be having a material impact in future.

Basis of issue price

1. Earnings per share i.e., EPS pre-issue for the last three years (as adjusted for changes in capital).
2. P/E pre-issue.
3. Average return on net worth in the last three years.

4. Minimum return on increased net worth required to maintain pre-issue EPS.
5. Net Asset Value per share based on last balance sheet.
6. Net Asset Value per share after issue and comparison thereof with the issue price.
7. Comparison of all the accounting ratios of the issuer company as mentioned above with the industry average and with the accounting ratios of the peer group (i.e., companies of comparable size in the same industry. (Indicate the source from which industry average and accounting ratios of the peer group has been taken).
8. The face value of shares (including the statement about the issue price being "X" times of the face value) and that of the IDRs. The aggregate face value of the total equity shares underlying a single IDR also shall be given :
Provided that the projected earnings shall not be used as a justification for the issue price in the prospectus :
Provided further that the accounting ratios disclosed in the prospectus in support of basis of the issue price shall be calculated after giving effect to the consequent increase in capital on account of compulsory conversions outstanding, as well as on the assumption that the options outstanding, if any, to subscribe for additional capital will be exercised.

Main provisions of articles of association/main charter of the issuer

Material contracts and documents for inspection

Place at which inspection of the documents specified under rule 6 of the Companies (Issue of Indian Depository Receipts) Rules, 2004, the prospectus, the financial statements and auditor's report thereof will be allowed during the normal business hours.

Other information

1. Disclosure of mandatory vetting of the prospectus by the legal counsel to the Issuer operating at the place where the registered office of the Issuer is situated.
2. Consent of Merchant Bankers, overseas custodian bank, the domestic depository and all other intermediaries associated with the issue of IDRs.
3. Fees and expenses payable to the intermediaries involved in

the issue of IDRs.

C. Contents of Abridged Prospectus [Refer Rule 8(i) of the IDR Rules]

1. General Instructions: The information to be provided under each of the heads specified below shall be as per the requirement of Part I of Chapter VI except when specified otherwise.
2. The Abridged Prospectus shall be printed in a font size which shall not be visually smaller than Times New Roman Size 10.
3. The order in which items appear in the Abridged Prospectus shall correspond, as far as may be applicable, to the order in which items appear in the Prospectus.
4. The application form shall be so positioned that on the tearing-off of the application form, no part of the information given in the Abridged Prospectus is mutilated.
5. General Information.
 - 5.1 The name of the issuer company and address of the registered office of the issuer company, along with telephone number, fax number, e-mail address and website address, and where there has been a change in the address of the registered office or name of the Issuer, details thereof.
 - 5.2 Name, address and contact information of the registered office of the company;
 - 5.3 Name, address and contact information of the Domestic depository, the Overseas Custodian Bank with the address of its office in India, the Merchant Banker, the Underwriter to the issue, Advisors to the issue and any other intermediary which may be appointed in connection with the issue of IDRs;
 - 5.4 Interest of Experts and Counsel;
 - 5.5 Name, address and contact information of the compliance officer in relation to the issue of IDRs. The compliance officer should be placed in India;
 - 5.6 Name, address and contact information of Stock Exchanges where applications are made or proposed to be made for listing of the IDRs;
 - 5.7 Disclosure about provisions relating to punishment for fictitious applications;

- 5.8 Statement/declaration for refund of excess subscription;
 - 5.9 Statement that an interest of 15 per cent per annum would be paid to the investors if the allotment letters/refund orders are not despatched within 15/30 days of the closure of the public issue, as the case may be;
 - 5.10 Declaration about issue of allotment letters/certificates/IDRs within the stipulated period;
 - 5.11 Date of opening of issue;
 - 5.12 Date of closing of issue;
 - 5.13 Method and Expected Time Table of the issue;
 - 5.14 A statement that subscription to the issue shall be kept open for at least 3 working days and not more than 10 working days;
 - 5.15 Date of earliest closing of the issue;
 - 5.16 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;
 - 5.17 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;
 - 5.18 Details of availability of prospectus and forms, i.e., date, time, place, etc.;
 - 5.19 Amount and mode of payment seeking issue of IDRs;
 - 5.20 Disclosure on Investor Grievances and Redressal System;
 - 5.21 That the company undertakes to subject itself to the jurisdiction of Indian Courts having jurisdiction over the place where the stock exchange is situated regarding grievances of the applicants for IDRs.
6. Capital Structure of the issuer-company
- Following details to be furnished :
- 6.1 Authorised, issued, subscribed and paid-up capital (Number of instruments, description, aggregate nominal value).
 - 6.2 Size of present issue.
 - 6.3 Paid-up Capital :
 - before the issue;

- after the issue (if the IDR issue involves issue of fresh equity shares); and
- share premium account (before and after the issue)

6.4 Detailed notes to Capital Structure

7. Terms of the Present Issue

7.1 Authority for the issue, terms of payment and procedure and time schedule for allotment and issue of certificates/refund orders.

7.2 The clause “Interest in Case of Delay in Despatch of Allotment Letters/Refund Orders in case of Public Issue” shall appear.

8. Instructions for applicants.

8.1 How to Apply, Availability of Prospectus, Abridged Prospectus and Application Forms, Mode of Payment and book-building procedure, if relevant.

8.2 In the application form, the declaration relating to Nationality and Residency shall be shown prominently as under:

“Nationality and Residency (Tick whichever is applicable)

- i. I am/We are Indian National(s) resident in India and I am/we are not applying for the said equity shares as nominee(s) of any person resident outside India or Foreign National(s).
- ii. I am/We are Indian National(s) resident in India and I am/we are applying for the said equity shares as power of attorney holder(s) of Non-Resident Indian(s) mentioned below on non-repatriation basis.
- iii. I am/We are Indian National(s) resident outside India and I am/we are applying for the said equity shares on my/our own behalf on non-repatriation basis.”

8.3 The application form should contain necessary instructions/provisions for the following :

- i. Instructions to applicants to mention the number of application form on the reverse of the instruments to avoid misuse of instruments submitted along with the applications for shares/debentures in public issues.
- ii. Provision in the application form or inserting particulars relating to bank account number and the name of the bank with whom such account is held, to enable printing of

the said details in the refund orders or for refunds through Electronic Clearing System.

- iii. Instruction to applicants to disclose Permanent Account Number in the application form, irrespective of the amount for which application/bid is made, along with the instruction that applications without Permanent Account Number would be rejected.
- iv. Details of options, if any, to receive securities subscribed for and a statement that trading in securities on the stock exchanges in physical form will be available only subject to limits prescribed by the Board from time to time.

8.4 Any special tax benefits for company and its shareholders (Only section numbers of the Income-tax Act and their substance should be mentioned, without reproducing the text of the sections).

8.5 Restrictions on investments in IDRs/fungibility of IDRs.

9. Particulars of the issue

9.1 Objects of the issue

9.2 Project cost

9.3 Means of financing

9.4 Name of Appraising Agency, if any

9.5 Name of Monitoring Agency, if any

10. Description of the Indian Depository Receipts and Rights of IDR Holders

10.1 Brief description of the Indian Depository Receipts

10.2 Dividends, Other Distributions and Rights of IDR holders

10.3 Voting rights and their manner of exercise by IDR holders, if any.

10.4 Record dates and how the same will be disclosed.

10.5 Reports and other communication to which the IDR holders will be entitled.

10.6 Conversion procedure of IDRs into shares

10.7 Governing Law regarding various aspects of IDRs and transactions therein.

11. Company, Management and Project

11.1 History and main objects and present business of the company.

11.2 Promoters/controlling shareholders and their

background.

11.3 Names, address and occupation of manager, managing director, and other Directors (including nominee-directors and whole-time directors) giving their directorships in other companies.

11.4 Location of the project.

11.5 Plant and machinery, technology, process, etc.

11.6 Collaboration, any performance guarantee or assistance in marketing by the collaborators

11.7 Infrastructure facilities for raw materials and utilities like water, electricity, etc.

11.8 Schedule of implementation of the project and progress made so far, giving details of land acquisition, civil works, installation of plant and machinery, trial production, date of commercial production, etc.

11.9 Nature of the products/services and end users.

11.10 Existing, licensed and installed capacity of the product, demand of the product-existing, and estimated in the coming years as estimates by a Government authority or by any other reliable institution, giving source of the information. In case the company is providing services, relevant information with regard to nature/extent of services, etc., have to be furnished.

11.11 Approach to marketing and proposed marketing set up.

11.12 Export possibilities and export obligations, if any.

11.13 Stock Market Data : Disclose particulars of :—

- a. Market price of shares for each quarter of the last three calendar years preceding the calendar year preceding the year of the issue of Prospectus (High, Low, Average Daily Trading Volume).
- b. Market price of shares for each month of the calendar year preceding the year of the issue of Prospectus (High, Low, Average Daily Trading Volume).
- c. Market price of shares for the month preceding the date of Prospectus (High, Low, Average Daily Trading Volume).
- d. The Opening and Closing price on the last day of the preceding month of the date of Prospectus along with the volume.

- e. This information should be provided, exchange wise, if the securities are listed in more than one exchange.
 - f. This information should be updated as on last available date before the date of prospectus.
 - g. If it is a further issue of IDRs which are already listed in India, the above information should be given about such IDRs also.
12. Particulars with regard to the subsidiaries/associates of the issuer
- The following information for the last 3 years based on the audited statements in respect of subsidiaries and associates of the Issuing Company:
- 12.1 Date of incorporation;
 - 12.2 Nature of activities;
 - 12.3 Equity Capital;
 - 12.4 Reserves (excluding revaluation reserve);
 - 12.5 Sales;
 - 12.6 Profit After Tax (PAT);
 - 12.7 Earnings Per Share (EPS); and
 - 12.8 Net Asset Value (NAV);
13. Basis for Issue Price;
- 13.1 Earnings per share i.e., EPS pre-issue for the last three years (as adjusted for changes in capital);
 - 13.2 P/E pre-issue
 - 13.3 Average return on net worth in the last three years
 - 13.4 Minimum return on increased net worth required to maintain pre-issue EPS;
 - 13.5 Net Asset Value per share based on last balance sheet;
 - 13.6 Net Asset Value per share after issue and comparison thereof with the issue price.
 - 13.7 Comparison of all the accounting ratios of the issuer company as mentioned above with the industry average and with the accounting ratios of the peer group (i.e., companies of comparable size in the same industry. (Indicate the source from which industry average and accounting ratios of the peer group has been taken) :
- Provided that the projected earnings shall not be used as a justification for the issue price in the prospectus :
- Provided further that the accounting ratios disclosed in the

prospectus in support of basis of the issue price shall be calculated after giving effect to the consequent increase in capital on account of compulsory conversions outstanding, as well as on the assumption that the options outstanding, if any, to subscribe for additional capital will be exercised.

13.8 The face value of shares (including the statement about the issue price being “X” times of the face value) and that of the IDRs. The aggregate face value of the total equity shares underlying a single IDR also shall be given.

14. Outstanding Material Litigations and Defaults (in a summarised tabular form)

14.1 Material Litigation/Liabilities including arrears/Potential liabilities of the issuer, its promoters/controlling shareholders/directors and its subsidiaries and associates.

15. Material Development : Any material development after the date of the latest balance sheet and its impact on performance and prospects of the company.

16. Expert opinion obtained, if any

17. Change, if any, in directors and auditors during the last three years and reasons thereof

18. Time and Place of Inspection of material contracts (List of material contracts not required)

19. Financial Performance of the Company for the Last Five Years (Figures to be taken from the audited annual accounts in a tabular form)

19.1 Balance Sheet Data : Equity Capital, Reserves (State Revaluation Reserve, the year of revaluation and its monetary effect on assets) and borrowings.

19.2 Profit and Loss data : Sales, Gross profit, Net profit, dividend paid, if any.

19.3 Any change in accounting policies during the last three years and their effect on the profits and the reserves of the company.

19.4 Following information as extracted from the report of the auditors reproduced in the main prospectus:

- i. net profit before accounting for extraordinary items
- ii. extraordinary items
- iii. net profit after accounting for extraordinary items

20. Management Discussions and Analysis on Accounts

21. Listed Ventures of Promoters/controlling shareholders
22. Disclosure on Investors Grievances & Redressal System
23. Statement regarding minimum subscription clause :
The following statement shall appear :
If the company issuing the IDRs does not receive the minimum subscription of 90 per cent of the issued amount on the date of closure of the issue, or if the subscription level falls below 90 per cent after the closure of issue on account of cheques having being returned unpaid or withdrawal of applications, the company shall forthwith refund the entire subscription amount received. If there is a delay beyond 8 days after the company becomes liable to pay the amount, the company shall pay interest at the rate of 15 per cent per annum for the period of delay.
24. Information relating to relevant provisions of Taxation law, Tax Treaties and their impact for IDR holders.
25. Brief details of the Domestic Depository, Overseas Custodian Bank and Depository Agreement.
26. Information relating to statutory and regulatory approvals required in home country for the issue and the related aspects and their status, and approvals from Indian Regulatory authorities.
27. Signatories to the Prospectus.

III. COMPLIANCES UNDER LISTING AGREEMENT FOR INDIAN DEPOSITORY RECEIPTS (IDRs)

Every issuer of an IDR has to comply with the conditions stipulated in the listing agreement for IDRs issued by SEBI. The highlights of the same are enumerated in the following table.

| <i>Reference</i> | <i>Subject matter</i> | <i>Requirement</i> |
|------------------|--|---|
| Clause 1 | Share allotment; advices of rights entitlement | Allotment should be made simultaneously and that in the event of its being impossible to issue letters of regret at the same time, a notice to that effect will be inserted in the press so that it will appear on the morning after the letters of allotment have been posted; advices of rights entitlement, wherever applicable, should be |

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| | | issued simultaneously. |
| Clause 2 | Intimation of date of Board Meeting | The Issuer is required to notify stock exchange at least 7 days in advance of the date of the meeting of its Board of Directors at which the recommendation or declaration of a dividend or a rights issue or convertible debentures, proposal for declaration of any bonus issue etc. |
| Clause 3 | Intimation after Board Meeting | The Issuer is required to, immediately after the meeting of its Board of Directors has been held to consider or decide the same, intimate to the Stock Exchange, (within 15 minutes of the closure of the board meeting) by phone, fax, telegram, e-mail about decision on recommendation/declaration of dividend, matters such as the total turnover, gross profit/loss, provision for depreciation, tax provisions and net profits for the year etc., |
| Clause 4 | Intimation to stock exchange on dividend payment | The Issuer is required to notify the stock exchange at least twenty-one days in advance of the date on and from which the dividend on shares will be payable . |
| Clause 6 | Intimation to Stock Exchange about increase of capital, re-issue of forfeited shares etc., | The Issuer is required to within 15 minutes of the closure of any board meeting intimate to the Stock Exchanges by phone, fax, telegram, e-mail about short particulars of any increase of capital, short particulars of the reissues of forfeited shares or securities, or the issue of shares or securities held in reserve for future issue or the creation in any form or manner of new shares or securities or any other rights, privileges or benefits to subscribe thereto, short particulars of any other alterations of capital, including calls, any other information necessary to enable the holders of the IDRs to appraise the issuer's position and to avoid the establishment of a false market. |

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| Cla use 8 | In-principal Approval | The issuer is required to obtain 'in-principle' approval for listing from the exchanges where its IDRs are listed, before issuing further IDRs. |
| Cla use 11 | Intimation to Stock exchange on matters pertaining to constitution of Board, Auditor, Compliance Officer etc. | The issuer is required to notify promptly to the stock exchange about change in the constitution of Board, Managing Director, Compliance officer, Auditor, Domestic Depository etc., |
| Cla use 12 | Forwarding copies of notices, annual reports etc to stock exchange | Copies of all notices, resolutions and circulars relating to new issue of capital prior to their dispatch to the equity shareholders or IDR holders; copies of all the notices, call letters or any other circulars including notices of meetings at the same time as they are sent to the equity shareholders, IDR holders, debenture holders or creditors or any class of them or as they are advertised in the Press; copy of the proceedings at all Annual and Extraordinary General Meetings of the Issuer; copy of the deposit agreement as soon as it is executed; copies of all notices, circulars, etc., issued or advertised in the press etc., |
| Cla use 14 | Filing of shareholding pattern | The issuer is required to file with the Exchange the shareholding pattern on a quarterly basis within 15 days of end of the quarter in the prescribed form. |
| Cla use 15 | | The Issuer is required to intimate to the Stock Exchanges, immediately of events such as strikes, lock outs, closure on account of power cuts, etc. and all events which will have a |

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| | | bearing on the performance/operations of the company as well as price sensitive information. |
| Clause 20 | Intimation on Variation on projected and actual profitability statement | The Issuer is required furnish on a quarterly basis a statement to the stock exchange indicating the variations between projected utilisation of funds and/or projected profitability statement made by it in its prospectus or letter of offer and the actual utilisation of funds and/or actual profitability. |
| Clause 23 | Appointment of Company Secretary, undertaking of due diligence etc. | <p>The Issuer is required to :</p> <p>(a) appoint the Company Secretary of the Issuer as Compliance Officer who will directly liaise with the authorities such as SEBI, Stock Ex-changes, ROC etc., and investors with respect to implementation of various clause, rules, regulations and other directives of such authorities and investor service & complaints related matter.</p> <p>(b) undertake a due diligence survey to ascertain whether the RTA is sufficiently equipped with infrastructure facilities such as adequate manpower, computer hardware and software, office space, documents handling facility etc., to serve the IDR holders.</p> <p>(c) furnish a copy of agreement or MOU entered into with overseas custodian bank, domestic depository, merchant banker and RTA to the stock exchange</p> |
| Clause 24 | Corporate Governance | <p>Requirements on</p> <p>(a) Composition of the Board</p> <p>(b) Non-executive directors' compensation and disclosures</p> <p>(c) Other provisions as to Board and Committees</p> <p>(d) Code of Conduct for the Board</p> <p>(e) Audit Committee, its meeting powers, role</p> <p>(f) Subsidiary companies</p> |

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| | (g) Disclosures (h) CEO/CFO Certification (i) Report on Corporate Governance (j) Compliance Certificate from Practising Company Secretary or auditors |
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LESSON ROUND UP

- Indian Depository Receipt means any instrument in the form of a depository receipt created by Domestic Depository in India against the underlying equity shares of issuing company.
- Domestic Depository is custodian of securities registered with SEBI and authorised by the issuing company to issue Indian Depository Receipts.
- 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.
- Issue of IDRs are regulated by Companies (Issue of Indian Depository Receipts) Rules, 2004.
- The IDRs issued should be listed on the recognized Stock Exchange(s) in India as specified and such IDRs may be purchased, possessed and freely transferred by a person resident in India.
- Issuer of an IDR has to comply with the listing conditions stated in the listing agreement for IDRs