Sub Section – II

Issues by foreign companies in India (Indian Depository Receipts) (IDRs)

This sub-section attempts to cover the basic concepts and questions related to issuance of Indian depository receipts (IDRs) by foreign companies. For full particulars of laws governing the primary market, please refer to the Acts/Regulations/Guidelines/Circulars appearing under the Legal Framework Section of our website i.e. www.sebi.gov.in.

1. What is an Indian Depository Receipts (IDRs)?

An IDR is an instrument denominated in Indian Rupees in the form of a depository receipt created by a Domestic Depository (custodian of securities registered with the Securities and Exchange Board of India) against the underlying equity shares of issuing company to enable foreign companies to raise funds from the Indian securities Markets.

2. Which are all the legislations governing IDRs?

Central Government notified the Companies (Issue of Indian Depository Receipts) Rules, 2004 (IDR Rules) pursuant to the section 605 A of the Companies Act. SEBI issued guidelines for disclosure with respect to IDRs and notified the model listing agreement to be entered between Stock Exchange and the foreign issuer specifying continuous listing requirements.

3. Who is eligible to issue IDRs?

The eligibility criteria given under IDR Rules and Guidelines are as under-:

The foreign issuing company shall have-:

- pre-issue paid-up capital and free reserves of at least US$ 50 million and have a minimum average market capitalization (during the last 3 years) in its home country of at least US$ 100 million;
- a continuous trading record or history on a stock exchange in its home country for at least three immediately preceding years;
- a track record of distributable profits for at least three out of immediately preceding

five years;

- listed in its home country and not been prohibited to issue securities by any Regulatory Body and has a good track record with respect to compliance with securities market regulations in its home country.

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

4. Which intermediaries are involved in issuance of IDRs?

- Overseas Custodian Bank is 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 in the underlying equity shares of the issuer is deposited.
- Domestic Depository who is a custodian of securities, registered with SEBI and authorised by the issuing company to issue Indian Depository Receipts;
- Merchant Banker registered with SEBI who is responsible for due diligence and through whom the draft prospectus for issuance of the IDR and due diligence certificate is filed with SEBI by the issuer company.

5. Whether the draft prospectus for IDRs has to be filed with SEBI?

Yes. Foreign issuer is required to file the draft prospectus with SEBI while complying with the requirements of SEBI (ICDR) Regulations, 2009. Any changes specified by SEBI shall be incorporated in the final prospectus to be filed with Registrar of Companies.

6. Whether any listing permission is required for issuance of IDRs?

Yes, the issuer company is required to obtain in-principle listing permission from all the recognized stock exchanges in which the issuer proposes to get its IDRs listed.

7. Whether the IDRs are required to be listed in any stock exchanges of India?

Yes, The IDRs are required to be listed in atleast one stock exchange in India having nationwide terminals.

8. Whether IDRs can be converted/redeemed into underlying equity shares?

IDRs can be converted/ redeemed into the underlying equity shares only after the expiry of one year from the date of the listing of the IDRs, subject to the compliance of the related provisions of Foreign Exchange Management Act and Regulations issued thereunder by RBI & SEBI in this regard.

9. What are the exit options available to the investor in IDR?

The Investor may trade the IDRs in India or can request for redemption of the IDRs to the issuer company.

10. Who is responsible to distribute the corporate benefits to the IDR holders?

On the receipt of dividend or other corporate action on the IDRs, the Domestic Depository shall distribute the corporate benefits to the IDR holders in proportion to their holdings of IDRs.

11. Can an IDR holder appoint any nominee in case of death?

Yes, an IDR holder can at any time nominate a person to whom his IDRs shall vest in the event of his death.

12. What are the requirements for investing in IDRs?

Following are some of the requirements for investing in IDRs:

- IDRs can be purchased by any person who is resident in India as defined under FEMA
- Minimum application amount in an IDR issue shall be Rs. 20,000.
- Investments by Indian companies in IDRs shall not exceed the investment limits, if any, prescribed for them under applicable laws
- In every issue of IDR—
    - At least 50% of the IDRs issued shall be subscribed to by QIBs;
    - The balance 50% shall be available for subscription by non□institutional and retail.

13. What is a fungibility window?

Fungibility window is the time period specified by the issuer company during which IDR holders can apply for conversion/redemption of IDRs into underlying equity shares.

14. How is the IDR holder informed about the duration of fungibility window?

IDR holders can look for such announcements made by the company in leading English and Hindi national daily news papers with wide circulation as well as the websites of the stock exchanges.

15. Can part of the IDR holding be converted/ redeemed into shares?

An IDR holder has option of choosing the number of IDRs to be applied for conversion/redemption.

Note: Some of the procedures/ guidelines are subject to change by SEBI, RBI, Ministry of Corporate Affairs or the issuer company. The investors need to take into account such changes before taking investment decisions.