

Corpsec Hotline

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AMENDMENT TO OVERSEAS LISTING GUIDELINES

The listing of American Depositary Receipts (**ADRs**), Global Depositary Receipts(**GDRs**) and Foreign Currency Convertible Bonds (**FCCBs**) by Indian companies on stock exchanges overseas are regulated by the Scheme for Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depositary Receipt Mechanism) Scheme which was notified by the Government of India on November 12, 1993 and guidelines issued thereunder by the Ministry of Finance from time to time (the "**GDR/ADR Guidelines**").

By a notification dated August 31, 2005, the Ministry of Finance amended the GDR/ADR Guidelines in order to bring them in alignment with SEBI's guidelines on domestic capital issues. The notification incorporated the following changes to the GDR/ADR Guidelines:-

A listed Indian Company, which is not eligible to raise funds from the Indian capital market will not be eligible to issue **(i)** FCCBs and **(ii)** ordinary shares through GDRs. Unlisted companies, which have not yet accessed the GDR/ FCCB route for raising capital in the international market would require prior or simultaneous listing in the domestic market, while seeking to issue **(i)** FCCBs or **(ii)** ordinary shares through GDRs under the GDR/ADR Guidelines. The said notification clarifies that unlisted companies, which have already issued GDRs / FCCBs in the international market, would now require to list in the domestic market on making profit beginning financial year 2005-06 or within three years of such issue of GDRs / FCCB, whichever is earlier.

Erstwhile Overseas Corporate Bodies who are not eligible to invest in India through the portfolio route and entities prohibited to buy, sell or deal in securities by SEBI, will also not be eligible to subscribe to **(i)** FCCBs and **(ii)** ordinary shares through GDRs.

The pricing of GDR and FCCB issues should be made at a price not less than the **higher of the following two averages:** **(i)** The average of the weekly high and low of the closing prices of the related shares quoted on the stock exchange during the six months preceding the relevant date; and **(ii)** The average of the weekly high and low of the closing prices of the related shares quoted on a stock exchange during the two weeks preceding the relevant date. The "relevant date" means the date thirty days prior to the date on which the meeting of the general body of shareholders is held, in terms of section 81 (IA) of the Companies Act, 1956, ("**Companies Act**") to consider the proposed issue.

The voting rights shall be as per the provisions of the Companies Act and in a manner in which restrictions on voting rights imposed on GDR issues shall be consistent with the Companies Act. RBI regulations regarding voting rights in the case of banking companies will continue to be applicable to all shareholders exercising voting rights.

-Mini Raman & Kishore Joshi

You can direct your queries or comments to the authors

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