

Corpsec Hotline

June 29, 2006

INTERNATIONAL LISTINGS GUIDELINES RELAXED FURTHER FOR UNLISTED NON-PROFIT MAKING COMPANIES

The Ministry of Finance, Government of India ("MoF"), pursuant to its **notification dated June 28, 2006** ("Notification") has provided further relaxation to unlisted, non-profit making companies, who have issued American Depositary Receipts ("ADRs"), Global Depositary Receipts ("GDRs") or Foreign Currency Convertible Bonds ("FCCBs") in the international market, by allowing them to make a sponsored ADRs, GDRs or FCCBs offering, without having to comply with the requirement for listing their shares.

Euro Issue Guidelines

The principal regulation governing such issuance of ADRs, GDRs and FCCBs by Indian companies is the Scheme for Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depositary Receipt Mechanism) Scheme notified by the Government of India on November 12, 1993, which has undergone several revisions/modifications thereto ("Euro Issue Guidelines").

Recent Modifications

There have been quite a few modifications to the Euro Issue Guidelines and one significant modification was issued on **August 31, 2005**, it stipulated that only listed companies, or unlisted companies who were simultaneously going for a domestic listing could issue ADRs, GDRs or FCCBs. Further, the notification stipulated that unlisted companies, which had already issued ADRs, GDRs or FCCBs, were required to compulsorily list their shares in the domestic capital markets either on (i) making profits beginning financial year 2005-06 or (ii) within three years of the issuance of ADRs, GDRs or FCCBs, whichever was earlier (for more details, please refer to our CorpSec Hotline dated September 1, 2005 ***Amendment to Overseas Listing Guidelines***). Subsequently, in **March 31, 2006** the government relaxed the 2005 requirement for unlisted companies and issued a notification under which all non-profit making unlisted companies, which had issued ADRs, GDRs or FCCBs under the Euro Issue Guidelines were required to list their shares on the domestic capital markets within three years of turning profitable. The March 2006 notification however maintained status quo with regard to fresh issues of ADRs, GDRs or FCCBs, by such companies (for more details, please refer to our CorpSec hotline dated April 3, 2006 ***International Listings Guidelines Amended- Relaxation for Unlisted Companies in the Red***).

June 28, 2006 Notification

In view of growing industry concerns and representations by industry members, the MoF has issued the Notification issued on June 28, 2006 further relaxing the August 31, 2005 requirement for unlisted companies. This most recent amendment to the Euro Issue Guidelines allows non-profit making unlisted companies, who had issued ADRs/GDRs prior to August 31, 2005 to do a sponsored ADRs/GDRs issue, for the shares held by its existing shareholders.

On the other hand, unlisted companies which have not issued ADRs, GDRs or FCCBs prior to August 31, 2005 will still be subject to the restriction on issuance of ADRs, GDRs and FCCBs.

- **Geetanjali Mehlwal & Ruetveij Pandya**

You can direct your queries or comments to the authors

Source: Press Information Bureau

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