

Corpsec Hotline

February 07, 2007

VOTING OF ADRS/GDRS ISSUED BY BANKS TO BE SCRUTINIZED

The Reserve Bank of India ("RBI") has, on **February 5, 2007, issued a circular** ("Circular"), requiring all banks who have issued American Depositary Receipts ("ADRs") or Global Depositary Receipts ("GDRs") to provide an undertaking stating that such banks shall not take cognizance of (i) any voting by the overseas depositary, who is the shareholder of the bank and has issued the depositary receipts to investors ("Investors") on the basis of the shares held by it ("Depositary"), if such voting is in contravention of the depositary agreement entered into by the relevant bank and the Depositary ("Depositary Agreement") and amend the terms of the Depositary Agreements; and (ii) the terms of the Depositary Agreement should not be amended without the bank obtaining the prior approval of the RBI in this regard.

Further, the RBI has directed the banks who have issued ADRs or GDRs to furnish a copy of the Depositary Agreement entered into by them with the RBI.

Euro Issue Guidelines

The issuance of ADRs and GDRs and by Indian issuers 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 "Euro Issue Guidelines").

The requirement for the appointment of the Depositary emanates from the Euro Issue Guidelines and banks, like any other issuer, enters into the Depositary Agreement with the Depositary. Since the Depositary is a shareholder of the issuer company, the Depositary Agreement has a provision as to voting rights on the shares held by the Depositary. Generally such a provision would state that the Depositary would not exercise voting rights in respect of the shares held by them or they would do so as directed by the Board of Directors of the issuer. However, there are certain instances when the Investors (persons holding the ADRs or GDRs) have the right to direct the Depositaries to vote as per the Investor's instructions.

Rationale behind the Circular

Under the Banking Regulation Act, 1949 ("Banking Act"), no shareholder in a bank can exercise voting rights of more than 10 per cent irrespective of their shareholding. Therefore, even if a person has 51 per cent in a bank, such person cannot vote beyond 10 per cent.

The Circular seems to have been issued in order to check and ensure that no person, who is a holder of shares and is a holder of ADRs in a bank can indirectly exercise voting rights over and above the limits stipulated under the Banking Act.

Implications

One implication of this move by RBI would be that RBI would be able to monitor if there is any breach of the provisions of the Banking Act. However, the other implication is that the banks (who have issued ADRs or GDRs) would not be able to revise the Depositary Agreements without the prior approval of the RBI.

The Depositary Agreement, although rarely amended, governs the terms of the relationship between the bank and the depositary and consequently has a lot of terms, which are purely commercial and are not in relation to voting. Any RBI approval for the amendment of the Depositary Agreement may take a substantial time to obtain thereby causing delay and possible rejection of the proposal.

The actual implications of this Circular will become clearer over time.

Source: *RBI Circular dated February 5, 2007.*

- **Pranjal Puranik** & **Ruetveij Pandya**

You can direct your queries or comments to the authors

DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does not substitute the need to refer to the original pronouncements.

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In case this mail doesn't concern you, please unsubscribe from mailing list.

Research Papers

M&A In The Indian Technology Sector

February 19, 2025

Unlocking Capital

February 11, 2025

Fintech

January 28, 2025

Research Articles

Re-Evaluating Press Note 3 Of 2020: Should India's Land Borders Still Define Foreign Investment Boundaries?

February 04, 2025

INDIA 2025: The Emerging Powerhouse for Private Equity and M&A Deals

January 15, 2025

Key changes to Model Concession Agreements in the Road Sector

January 03, 2025

Audio

Securities Market Regulator's Continued Quest Against "Unfiltered" Financial Advice

December 18, 2024

Digital Lending - Part 1 - What's New with NBFC P2Ps

November 19, 2024

Renewable Roadmap: Budget 2024 and Beyond - Part I

August 26, 2024

NDA Connect

Connect with us at events, conferences and seminars.

NDA Hotline

Click here to view Hotline archives.

Video

Arbitration Amendment Bill 2024: A Few Suggestions | Legally Speaking With Tarun Nangia | NewsX

February 12, 2025

**What India’s Transition to New Data
Protection Law Means for Global
Businesses**

January 23, 2025

**India 2025: The Emerging
Powerhouse for Private Equity and
M&A Deals**

January 16, 2025
