

SEBI/CFD/DIL/DIP/37/2009/31/07

July 31, 2009

To All Registered Merchant Bankers

Dear Sir/Madam,

Sub.: Amendments to the SEBI (Disclosure and Investor Protection) Guidelines, 2000- amendment to Chapter VIA concerning general and disclosure requirements pertaining to IDR issues

1. In order to align the disclosure requirements pertaining to issuance of Indian Depository Receipts (IDRs) with the recent amendments made to the Companies (Issue of Indian Depository Receipts) Rules, 2004 (hereinafter referred to as 'the Rules') by the Ministry of Corporate Affairs and to bring in more clarity with respect to the disclosure requirements pertaining to the IDR issuances, it has been decided to amend Chapter VIA of the SEBI (Disclosure and Investor Protection) Guidelines, 2000 (hereinafter referred to as the "DIP Guidelines"). Further, it is felt that there is a need to explicitly mention the extent of applicability of the provisions of the DIP Guidelines to the IDR issuances.
2. The amendments in the DIP Guidelines mainly relate to the disclosure of financial information pertaining to the issuing company and the extent of applicability of the DIP Guidelines to IDR issues.
3. The procedures for Rights issue of IDRs will be prescribed in due course.

4. The amendments mentioned in Annexure I shall come into effect immediately.
5. All registered merchant bankers are directed to ensure compliance with the amendments made vide this circular.
6. This circular is being issued in exercise of the powers conferred under sub-section (1) of Section 11 of the Securities and Exchange Board of India Act, 1992.
7. This circular and the entire text of the DIP Guidelines, including the amendments issued vide this circular, are available on SEBI website at www.sebi.gov.in under the categories “Legal Framework” and “Issues and Listing”.

Yours faithfully,

Parag Basu

Encl.: As above.

ANNEXURE I
AMENDMENTS TO THE SEBI (DIP) GUIDELINES, 2000
CHAPTER VIA
ISSUE OF INDIAN DEPOSITORY RECEIPTS (IDRs)

(I). In Chapter VIA -

A. in Part I, -

(1) for clause 6A.1, the following clause shall be inserted, namely:-

“6A.1 PRELIMINARY

(i) The guidelines in this Chapter are in addition to the provisions of the Companies (Issue of Indian Depository Receipts) Rules, 2004 (hereinafter referred to as “the IDR Rules”) and not in derogation thereof.

(ii) For the purpose of this Chapter, the expression, “Home country” means the country where the issuing company is incorporated and listed.”

(2) in clause 6A.3, -

(i) sub-clause (1) shall be omitted;

(ii) in sub-clause 4, after para (ii), the following para shall be inserted, namely:-

“(iii) Allotment to all these categories shall be made on proportionate basis only.”

(3) for clause 6A.5, the following clause shall be substituted, namely:-

‘6A.5 MINIMUM SUBSCRIPTION:

(a) Following statement shall appear for non-underwritten IDR issues:

“If the issuing company 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 issuing company shall forthwith refund the entire subscription amount received. If the issuing company fails to refund the entire subscription amount within 15 days from the date of the closure of the issue, it is liable to pay the amount with interest to the subscribers at the rate of 15 per cent per annum for the period of the delay.”

(b) Following statement shall appear for underwritten IDR issues:

“If the issuing company does not receive the minimum subscription of 90 per cent of the net offer to public including devolvement of Underwriters within 60 days from the date of closure of the issue, the issuing company shall forthwith refund the entire subscription amount received with interest to the subscribers at the rate of 15 per cent per annum for the period of the delay beyond 60 days.”

B. in Part II,

(1) in clause 6A.6 -

- (i) in sub-clause (5),
 - (a) the words “or letter of offer” occurring after the words “file a prospectus” and before the words “certified by” shall be omitted;
 - (b) the words “true and correct” shall be substituted by “true, correct and adequate”;
- (ii) after sub-clause 6, the following sub-clauses shall be inserted, namely:-

“7. The lead merchant banker shall furnish to the Board a due diligence certificate along with the draft publicly filed offer document. In addition to the due diligence certificate furnished along with the draft offer document, the lead merchant banker shall also:

(i) certify that all amendments suggestion or observations made by the Board have been incorporated in the offer document;

(ii) furnish a fresh "due diligence" certificate at the time of filing the prospectus with the Registrar of Companies;

(iii) furnish a certificate immediately before the opening of the issue that no corrective action on its part is needed;

(iv) furnish a certificate after the issue has opened but before it closes for subscription.

The due diligence certificates shall be in the format specified in Schedule –VI B. The lead merchant banker who is responsible for conducting due diligence exercise with respect to contents of the offer document, as per inter-se allocation of responsibilities, shall sign the due diligence certificate.

8. The issuing company shall soon after receiving final observations, if any, on the draft publicly filed prospectus or draft publicly filed Red Herring Prospectus from the Board, issue an advertisement in an english national daily with wide circulation and in one hindi national newspaper, which shall be in the format and contain the minimum disclosures as given in Part A of Schedule XX – A, both in case of fixed price issues as well as book built issues.

9. At any given time there shall be only one denomination of
IDRs of the issuing company.”

(2) in clause 6A.7, for sub-clause 1, the following sub-clause shall be
substituted, namely:-

“1. A statement shall be made by the Merchant Banker in the
Prospectus (including a due diligence certificate) in the format as
specified in Schedule VI-B”.

(3) in clause 6A.10,

a. for sub-clause 4, the following sub-clause shall be
substituted, namely:-

“4. Names, addresses and contact information of experts
and counsel;”

b. for sub-clause 9, following sub-clause shall be substituted,
namely:-

“9. Statement that the issuing company is required to pay an
interest of 15% p.a. to the investors if the allotments letters /
refund orders are not despatched within 15 days of the date
of closure of the public issue”

(4) For clause 6A.20, the following clause shall be substituted,
namely:-

“6A.20 FINANCIAL INFORMATION

6A.20.1 The audited consolidated or unconsolidated financial
statements, prepared in accordance with Indian GAAP (including all
Accounting Standards issued by the Institute of Chartered
Accountants of India) or with the International Financial Reporting
Standards (IFRS) or US GAAP, for a period of three financial years

immediately preceding the date of prospectus shall contain the following:

- (a). Report of 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 to Financial Statements
- (i) Statement Relating to Subsidiary Companies (in case of unconsolidated financial statements)
- (j) Related Party transactions
- (k) Liquidity and Capital Resources.

The financial information in the prospectus shall be disclosed in the issuing company's functional currency/reporting currency/national currency and the reporting currency shall be restricted to Sterling Pound/Euro/Yen/US Dollar.

In case, the financial results are prepared as per IFRS or US GAAP, the financial results shall be audited by a professional accountant or certified public accountant or equivalent (by whatever name called in the home country in accordance with the International Standards on Auditing (ISA)).

6A.20.2. Where the law of the home country requires annual statutory audit of the accounts of the issuing company, a report of the statutory auditor on the audited financial statements of the issuing company for each of the three financial years immediately

preceding the date of the prospectus including the profits or losses, assets, liabilities and cash-flow statement of the issuing company at the last date to which the accounts of the issuing company were made in the specified form:

Provided the gap between date of opening of issue and date of report shall not exceed 120 days.

6A.20.2.1. The report prepared by the statutory auditors of the issuing company should disclose financial statements (as per relevant period in the annual report) in Indian Rupees (at the closing rate of exchange, as at the date on which the financial information is presented), compiled in a tabular form and include the consolidated or unconsolidated income statement, consolidated or unconsolidated cash flow statements, consolidated or unconsolidated balance sheet and the capitalisation statement required under clause 6A.18.

6A.20.2.2. The interim audited financial statements in respect of the period ending on a date which is less than 180 days prior to the date of opening of the issue have to be included in the report, if the gap between the ending date of the latest audited financial statements disclosed as above and the date of the opening of the issue is more than 180 days:

Provided that if the gap between such date of latest audited financial statements and the date of opening of issue is 180 days or less, the requirement above shall be deemed to be complied with, if disclosures in respect of material changes in the financial position of issuing company for such gap are disclosed in the prospectus:

Provided further that in case of an issuing company which is a foreign bank incorporated outside India and which is regulated by a member of the Bank for International Settlements or a member of the International Organization of Securities Commissions which is a signatory to a Multilateral Memorandum of Understanding, the requirement above, in respect of period beginning with last date of period for which the latest audited financial statements are made and the date of opening of the issue shall be satisfied, if the relevant financial statements are based on limited review report of such statutory auditor.

6A.20.2.3 .In case the issuing company opts to prepare and disclose the financial results as per US GAAP, a reconciliation statement vis-a-vis Indian GAAP and summary of significant differences between the Indian GAAP and US GAAP has to be annexed with the report. If financial results are prepared in accordance with IFRS, then issuing company shall annex the summary of significant differences between the Indian GAAP and IFRS.

6A.20.3. Where the law of the home country does not require annual statutory audit of the accounts of the issuing company, a report, prepared in accordance with Indian GAAP certified by Chartered Accountant in practice within the terms and meaning of the Chartered Accountants Act, 1949 on the financial statements/ results of the issuing company for each of the three financial years immediately preceding the date of prospectus including the profits or losses, assets, liabilities and cash-flow statement of the issuing company at the last date to which the accounts of the issuing company were made in the specified form:

Provided that the gap between date of opening of issue and date of report shall not exceed 120 days.

6A.20.3.1. The report prepared by the Chartered Accountants should disclose financial statements in Indian Rupees (at the closing rate of exchange, as at the date on which the financial information is presented), compiled in a tabular form and include the consolidated or unconsolidated income statement, consolidated or unconsolidated cash flow statements, consolidated or unconsolidated balance sheet and the capitalisation statement required under clause 6A.18.

6A.20.3.2. The interim financial statements in respect of the period ending on a date which is less than 180 days prior to the date of opening of the issue have to be included in report, if the gap between the ending date of the latest financial statements disclosed above and the date of the opening of the issue is more than 180 days:

Provided that if the gap between such date of latest audited financial statements and the date of opening of issue is 180 days or less, the requirement above shall be deemed to be complied with if disclosures in respect of material changes in the financial position of issuing company for such gap are disclosed in the prospectus.

6A.20.4. 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 body(ies) corporate;

(b) The reports as stated above in respect of those body(ies) corporate also.”

(5) in clause 6A.27 , after sub-clause 13 , the following sub-clause shall be inserted, namely:-

“14. A comparative analysis of the corporate governance provisions that would be followed by the issuing company vis-à-vis that is applicable to Indian listed companies.”

(6) in clause 6A.36, for the words “Rule 6”, the words “Rule 7” shall be substituted.

C. for Part III, the following part shall be substituted, namely:-

“PART III: APPLICABILITY OF PROVISIONS OF THE SEBI (DIP) GUIDELINES, 2000

1. Except Chapter VI, all other chapters of the SEBI (DIP) Guidelines, 2000 would apply to an issue of Indian Depository Receipts (IDRs) as if the word “Company” or “issuer” used in other chapters deemed to include “Bodies Corporate/ Companies incorporated outside India issuing IDRs”. The extent of applicability of each Chapter is mentioned below:

- (i). Chapter I: All clauses in the Chapter are applicable
- (ii). Chapter II: All clauses in the Chapter are applicable except clause 2.1.1 to 2.1.3, 2.2 to 2.5A, 2.6 and 2.7
- (iii). Chapter III: All clauses in the Chapter are applicable except clause 3.2 to 3.4.1, 3.4.2 to 3.4.3, 3.5.5 and 3.7

- (iv). Chapter IV: Entire Chapter is not applicable
- (v). Chapter V: All clauses in the Chapter are applicable except clause 5.2, 5.3.3, 5.3.4, 5.3.6.2, 5.6A, 5.6B, 5.7.2, 5.11 and 5.15A.
- (vi). Chapter VII: All clauses in the Chapter are applicable except clause 7.2.2.2, 7.2.2.3 and 7.6.1.2.
- (vii). Chapter VIII: All clauses in the Chapter are applicable except clause 8.1 to 8.4, 8.5 (a) to (f), 8.6, 8.7, 8.8.1(b), 8.8.2, 8.12, 8.15 to 8.17 and 8.19
- (viii). Chapter VIIIA: Entire Chapter is not applicable
- (ix). Chapter IX: Applicability of Chapter IX is as follows:
 - (a). Clause 9.1. to 9.1.13: Applicability is restricted to any issue advertisements made in India pertaining to the IDR issue of the issuing company;
 - (b). Clause 9.1.14 and 9.1.14A: Applicability is restricted to any public communications and publicity material issued or published in any media in India;
 - (c). Clause 9.1.14B: Entirely applicable;
 - (d). Clause 9.1.15: Applicability is restricted to any product advertisement of an issuing company issued or published in any media in India;
 - (e). Clause 9.1.16 to 9.1.19: Entirely applicable;
 - (f). Clause 9.2 (a) and (b): Applicability is restricted to any material or information released in India and any issue advertisements and publicity materials issued or published in any media in India;
 - (g). Clause 9.2A: Not applicable;
 - (h). Clause 9.3.1 (i), (ii) and (iii): Entirely applicable;
 - (i). Clause 9.3.1 (iv): Applicability is restricted to any research report circulated in India;

- (x). Chapters X, XIA, XIIA, XIII, XIII A, XIV, & XV are not applicable
- (xi). Chapter XI: All clauses in the Chapter are applicable except Clause 11.1(A), 11.2, 11.3 (b), 11.3.1 (ii) to (iii), 11.3.1 (viii), 11.3.5 (i), (ii), (ii-b), (iii) and (xxiii) and 11.4.
- (xii). Chapter XVI: All clauses in the Chapter are applicable except Clause 16.1.1, and 16.2.3.1 (b).
- (xiii). Chapter XVII: All clauses in the Chapter are applicable.

2. The extent of applicability of Schedules of SEBI (DIP) Guidelines, 2000 to the IDR issue is mentioned below:

- (i). Schedule I : Applicable, as if the word “Company Act, 1956 ” used in Schedule refers to the Companies Act applicable in the home country of the issuing company
- (ii). Schedule II: Applicable
- (iii). Schedule III, IIIA, IV, V, VI., VI-A: Not applicable
- (iv). Schedule VI-B and VII: Applicable
- (v). Schedule VIIA, VIII, IX, X ,XI, XII, XIII, XIV and XV: Not applicable
- (vi). Schedule XVI: Applicable
- (vii). Schedule XVIIA: Not applicable
- (viii). Schedule XVII : Applicable
- (ix). Schedule XVIII : Applicable subject to re-calculation by taking the minimum application size as Rs.20,000/-
- (x). Schedule XVIII A and XIX: Not applicable
- (xi). Schedule XIX A and XX: Applicable
- (xii). Schedule XXA: Applicable, as if the words “Company Act, 1956” used in Schedule refers to the Companies Act applicable in the home country of the issuing company and the “clause 3.7.1(ii)” shall read as “Clause 6A.34 (8)”.
- (xiii). Schedule XXI: Applicable
- (xiv). Schedule XXI A and Schedule XXII : Not applicable

- (xv). Schedule XXIII,XXIII A,XXIV,XXV,XXVI and XXVII : Applicable
- (xvi). Schedule XXVIII and Schedule XXIX: Not applicable
- (xvii). Schedule XXX: Applicable”

D. in Part IV,

(1) in clause 1, for the words ” Part I of Chapter VI”, the words “Part II of Chapter VIA” shall be substituted.

(2) for clause 5.4, the following clause shall be substituted, namely :

“5.4 Names, addresses and contact information of experts and counsel”.

(3) for clause 5.9, the following clause shall be substituted, namely:-

“5.9 Statement that the issuer is required to pay an interest of 15% p.a. to the investors if the allotments letters / refund orders are not despatched within 15 days from the date of closure of the public issue”

(4) in clause 19, the word “five” shall be substituted by the word “three”.

(5) for clause 23, the following clause shall be substituted, namely:-

‘23. Statement regarding minimum subscription clause:

(a) Following statement shall appear for non-underwritten IDR issues:

“If the issuing company 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 issuing company shall forthwith refund

the entire subscription amount received. If the issuing company fails to refund the entire subscription amount within 15 days from the date of the closure of the issue, it is liable to pay interest to the subscribers at the rate of 15 per cent per annum for the period of the delay.”

(b) Following statement shall appear for underwritten IDR issues:

"If the issuing company does not receive the minimum subscription of 90 per cent of the net offer to public including devolvement of Underwriters within 60 days from the date of closure of the issue, the issuing company shall forthwith refund the entire subscription amount received with interest to the subscribers at the rate of 15 per cent per annum for the period of the delay beyond 60 days” ‘

(II). After Schedule VI-A, following Schedule shall be inserted, namely:-

“SCHEDULE VI-B

Clause 6A.6 (7)

**FORMAT OF THE DUE DILIGENCE CERTIFICATE TO BE FILED BY
THE LEAD MANAGER(S) FOR IDR ISSUES**

To,

SECURITIES AND EXCHANGE BOARD OF INDIA

Dear Sirs,

SUB.: ISSUE OF _____ (hereinafter referred to as 'IDRs') BY _____(hereinafter referred to as the 'Issuing Company')

We, the undernoted, have been appointed as the Merchant Banker (hereinafter referred to as the 'LM') to the proposed issue of IDRs by the Issuing Company and we state as follows:

1. The Draft Red Herring Prospectus (hereinafter referred to as the 'DRHP')/ Red Herring Prospectus (hereinafter referred to as the 'RHP')/ Prospectus is being filed with the Securities and Exchange Board of India (hereinafter referred to as the "Board") in compliance with Chapter VIA of the Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000 or any statutory modification or re-enactment thereof (hereinafter referred to as the "DIP Guidelines") read with the Companies (Issue of Indian Depository Receipts) Rules, 2004 (hereinafter referred to as "the IDR Rules"), on a public basis, for approval.
2. We have examined the disclosures made by the Issuing Company in jurisdictions where its underlying equity shares are listed so as to ensure uniformity and parity of information shared with investors across different regulatory jurisdictions (hereinafter referred to as "publicly available information") and participated in discussions with the senior management of the Issuing Company for the purpose of preparing disclosures on the Issuing Company in the DRHP/RHP/Prospectus.
3. We have examined various documents, more particularly referred to in the Annexure hereto, in connection with the finalization of the DRHP/RHP/Prospectus pertaining to the said issue.
4. On the basis of such examination and the discussions with the Issuing Company, its directors and other officers and other independent agencies/ experts/ reports, WE CONFIRM that:
 - (a) the DRHP/RHP/Prospectus forwarded to the Board is in conformity with the publicly available information and information based on

representations made by the senior management of the Issuing Company;

(b) the requirements under the IDR Rules and the DIP Guidelines and other relevant laws issued by the Board, the Government and any other competent authority in this behalf have been duly complied with; and

(c) based on the publicly available information and representations made by the senior management of the Issuing Company, the disclosures made in the DRHP/RHP/Prospectus are certified to be true and are adequate to enable the investors to make a well informed decision as to the investment in the proposed issue.

5. We confirm that besides ourselves, all the other intermediaries named in the DRHP/RHP/Prospectus, except [], are registered with the Board and that till date such registration is valid.
6. We have satisfied ourselves about the worth of the underwriters to fulfil their underwriting commitments.
7. We certify that the proposed activities of the Issuing Company for which the funds are being raised in the present issue fall within the 'main objects' listed in the object clause of the Memorandum of Association or other charter of the Issuing Company and that the activities which have been carried out until now are valid in terms of the object clause of its Memorandum of Association.
8. We confirm that necessary arrangements have been made to ensure that the moneys received pursuant to the issue are kept in a separate bank account and that such moneys shall be released by the said bank only, after permission, for listing of IDRs, is obtained from all the stock exchanges mentioned in the prospectus. We further confirm that the agreement entered into between the bankers to the issue and the Issuing Company specifically contains this condition.

9. We certify that no payment in the nature of discount, commission, allowance or otherwise shall be made by the Issuing Company or the promoters, directly or indirectly, to any person who receives securities by way of firm allotment in the issue.
10. We certify that disclosure has been made in the prospectus that the investors shall be given an option to get the IDRs in demat or physical mode.
11. We certify that the following disclosures have been made in the DRHP/RHP/Prospectus:
 - (a) An undertaking from the Issuing Company that at any given time there shall be only one denomination for the IDRs of the Issuing Company and
 - (b) An undertaking from the Issuing Company that it shall comply with such disclosure and accounting norms specified by the Board from time to time.
12. We confirm that none of the intermediaries named in the DRHP/RHP/Prospectus have been debarred from functioning by any regulatory authority.
13. We confirm that all the material disclosures in respect of the Issuing Company have been made in the red herring prospectus / prospectus and certify that any material development in the Issuing Company or relating to the issue, up to the commencement of listing and trading of the IDRs offered through this issue, shall be informed through public notices/ advertisements in all those newspapers in which pre-issue advertisement and advertisement for opening or closure of the issue have been given.
14. We confirm that the abridged prospectus contain all the disclosures as specified in the DIP Guidelines.
15. We confirm that agreements have been entered into with both the depositories for dematerialisation of the IDRs of the Issuing Company

PLACE: LEAD MERCHANT BANKER(S) TO THE ISSUE WITH HIS/
THEIR SEAL (S)

DATE:

ANNEXURE TO THE DUE DILIGENCE CERTIFICATE FOR THE ISSUE
OF

_____ BY _____

1. Memorandum and Articles of Association of the Issuing Company.
2. Necessary clearance from governmental, statutory, municipal authorities etc., for implementation of the project, wherever applicable.
3. Documents in support of the track record and experience of the promoters and their professional competence.
4. Listing Agreement of the Issuing Company for existing securities on the Stock Exchanges.
5. Consent letters from Issuing Company's auditors, Bankers to issue, Bankers to the Issuing Company, Lead Merchant Bankers, Brokers and where applicable, proposed Trustees.
6. Applications made by the Issuing Company to the financial institutions/banks for financial assistance as per object of the issue and copies of relative sanction letters.
7. Underwriting letters from the proposed underwriters to the issue.
8. Audited Balance Sheets of the Issuing Company/Promoter companies for relevant periods.
9. Auditors certificate regarding tax-benefits available to the Issuing Company, shareholders and debenture holders.
10. Certificate from architects or any other competent authority on project implementation schedule furnished by the Issuing Company, if applicable.
11. Reports from Government agencies / expert agencies / consultants / Issuing Company regarding market demand and supply for the product, industry scenario, standing of the foreign collaborators, etc.
12. Documents in support of the infrastructural facilities, raw material availability, etc.
13. Auditors' Report indicating summary of audited accounts for the period including that of subsidiaries of the Issuing Company.

14. Stock Exchange quotations of the last 3 years duly certified by designated stock exchange.
15. Minutes of the general body meetings and board meetings of the Issuing Company for matters which are in the prospectus
16. Revaluation certificate of Issuing Company's assets given by the Government Valuer or any other approved valuer.
17. Certificate from solicitors of the Issuing Company in regard to compliance of legal provisions of the prospectus.
18. Certificate from Issuing Company's legal counsel, operating at the place of its registered office, confirming that the legal counsel has done the mandatory vetting of the prospectus
19. A detailed checklist indicating compliance with each of the clauses contained in Chapter VI-A of the DIP Guidelines.

PLACE: LEAD MERCHANT BANKER (S) TO THE ISSUE WITH HIS / THEIR SEAL (S)

DATE: “