

CIRCULAR

SEBI/HO/MRD/DOP1/CIR/P/2019/106

October 10, 2019

To,

1. All recognized Stock Exchanges
2. All Listed Companies through recognized Stock Exchanges
3. All recognized Depositories
4. All recognized Custodians

Dear Sir / Madam,

Subject: Framework for issue of Depository Receipts

1. Reference is drawn to Section 41 of the Companies Act, 2013, Companies (Issue of Global Depository Receipts) Rules, 2014 (**'GDR Rules'**), the Depository Receipts Scheme, 2014 (**'DR Scheme'**), Reserve Bank of India (**'RBI'**) notification dated December 15, 2014, Central Government notification dated September 18, 2019 and Central Government notification dated October 07, 2019.
2. In light of the aforesaid, only 'a company incorporated in India and listed on a Recognized Stock Exchange in India' (**'Listed Company'**) may issue Permissible Securities or their holders may transfer Permissible Securities, for the purpose of issue of Depository Receipts (**'DRs'**), subject to compliance with the following requirements:

Eligibility

- 2.1. Listed Company is in compliance with the requirements prescribed under SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and any amendments thereof.
- 2.2. Listed company shall be eligible to issue Permissible Securities, for the purpose of issue of DRs, if:
 - (a) the Listed Company, any of its promoters, promoter group or directors or selling shareholders are not debarred from accessing the capital market by SEBI;
 - (b) any of the promoters or directors of the Listed Company is a promoter or director of any other company which is not debarred from accessing the capital market by SEBI;
 - (c) the listed company or any of its promoters or directors is not a wilful defaulter;
 - (d) any of its promoters or directors is not a fugitive economic offender.

- 2.3. Existing holders shall be eligible to transfer Permissible Securities, for the purpose of issue of DRs, if:
- (a) the Listed Company or the holder transferring Permissible Securities are not debarred from accessing the capital market by SEBI;
 - (b) the Listed Company or the holder transferring Permissible Securities is not a wilful defaulter;
 - (c) the holder transferring Permissible Securities or any of the promoters or directors of the Listed Company are not a fugitive economic offender.

Explanation 1: The restrictions at Paragraph (2.2) and (2.3) above shall not apply to the persons or entities mentioned therein, who were debarred in the past by SEBI and the period of debarment is already over as on the date of filing of the document as referred at Paragraph (2.13).

Explanation 2: For the purpose of this Circular, DR means a foreign currency denominated instrument, listed on an international exchange, issued by a foreign depository in a permissible jurisdiction on the back of permissible securities issued or transferred to a domestic custodian and includes 'global depository receipt' as defined in section 2(44) of the Companies Act, 2013.

Explanation 3: For the purpose of this Circular 'Foreign Depository' means a person which:

- (a) is not prohibited from acquiring permissible securities;
- (b) is regulated in any of the Permissible Jurisdiction as defined in this Circular; and
- (c) has legal capacity to issue DRs in the Permissible Jurisdiction where issue of DRs is proposed.

Explanation 4: For the purpose of this Circular, 'transfer of permissible securities by existing holders' means deposit of existing Permissible Securities of the Listed Company with a Domestic Custodian, for the purpose of issue of DRs, pursuant to formal agreement(s) among the Listed Company and the Foreign Depository. For this purpose, the Listed Company may also enter into arrangement(s) with, Indian Depository, Domestic Custodian and existing Permissible Securities holder(s), as may be necessary.

- 2.4. For the purpose of an initial issue and listing of DRs, pursuant to 'transfer by existing holders', the Listed Company shall provide an opportunity to its equity shareholders to tender their shares for participation in such listing of DRs.
- 2.5. Subsequent issue and listing of DRs, pursuant to 'transfer by existing shareholders' may take place subject to the limits approved pursuant to a special resolution in terms of GDR Rules.
- 2.6. A company proposing to make a public offer and list on a Recognized Stock Exchange, and also simultaneously proposing to issue Permissible Securities or transfer Permissible Securities of existing holders, for the purpose of issue of DRs and listing such DRs on an International Exchange, may seek in-principle and final approval from Recognized Stock Exchange as well as International Exchange. However, such issue or transfer of Permissible Securities for the

purpose of issue of DRs shall be subsequent to, the receipt of trading approval from the Recognized Stock Exchange for the public offer.

Permissible Jurisdictions and International Exchanges

- 2.7. Listed Company shall be permitted to issue Permissible Securities or transfer Permissible Securities of existing holders, for the purpose of issue of DRs, only in Permissible Jurisdictions and said DRs shall be listed on any of the specified International Exchange(s) of the Permissible Jurisdiction.

Explanation 1: For the purpose of this Circular, 'Permissible Jurisdiction' shall mean jurisdictions as may be notified by the Central Government from time to time, pursuant to notification no. G.S.R. 669(E) dated September 18, 2019 in respect of sub-rule 1 of rule 9 of Prevention of Money-Laundering (Maintenance of Records) Rules, 2005.

Explanation 2: For the purpose of this Circular 'International Exchange(s)' shall mean exchange(s) as may be notified by SEBI from time to time.

- 2.8. Listing of DRs on specified International Exchange shall meet the highest applicable level / standards for such listing by foreign issuers.

Explanation: *Examples of DR listing programs that would qualify for the aforesaid criteria:*

Issuer-sponsored Level III ADR programs listed on Nasdaq or the NYSE, DRs listed on the Main Board of the Hong Kong Stock Exchange, Global Depositary Receipts admitted to the Standard Segment of the Official List of the FCA and to trading on the London Stock Exchange.

Obligations of Listed Company

- 2.9. Listed Company shall ensure compliance with extant laws relating to issuance of DRs, including, requirements prescribed in this Circular, the Companies Act, 2013, the Foreign Exchange Management Act, 1999 ('FEMA'), Prevention of Money-Laundering Act, 2002, and rules and regulations made thereunder. For this purpose, Listed Company may also enter into necessary arrangements with Custodian, Indian Depository and Foreign Depository.

- 2.10. Listed Company shall ensure that DRs are issued only with Permissible Securities as the underlying.

Explanation: For the purpose of this Circular, 'Permissible Securities' shall mean equity shares and debt securities, which are in dematerialized form and rank pari passu with the securities issued and listed on a Recognized Stock Exchange.

- 2.11. Listed Company shall ensure that the aggregate of Permissible Securities which may be issued or transferred for the purpose of issue of DRs, along with Permissible Securities already held by persons resident outside India, shall not exceed the limit on foreign holding of such Permissible Securities under the applicable regulations of FEMA:

Provided that within the above limit, the maximum of aggregate of Permissible Securities which may be issued by the Listed Company or transferred by the existing holders, for the purpose of issue of DRs, shall be such that the Listed Company is able to ensure compliance with the minimum public shareholding requirement, after excluding the Permissible Securities held by the depository for the purpose of issue of DRs.

2.12. Listed Company shall ensure that the agreement entered with the Foreign Depository, for the purpose of issue of DRs, provides that the Permissible holder, including its Beneficial Owner(s), shall ensure compliance with holding limits prescribed under Paragraph (2.19).

2.13. Listed Company shall, through an intermediary, file with SEBI and the Recognized Stock Exchange(s), a copy of the initial document, by whatever name called, for initial issue of DRs issued on the back of Permissible Securities.

(a) SEBI shall endeavor to forward its comments, if any, to the Recognized Stock Exchange(s) within a period of 7 working days from the receipt of the document and in the event of no comments being issued by SEBI within such period, it shall be deemed that SEBI does not have comments to offer.

(b) Recognized Stock Exchange(s) shall take into consideration the comments of SEBI while granting in-principle approval to the Listed Company and decide on the approval within 15 working days of receipt of application and required documents.

Further, final document for such initial issue shall be filed with Recognized Stock Exchange(s) and SEBI for record purpose.

2.14. Listed Company shall ensure that any public disclosures made by the Listed Company on International Exchange(s) in compliance with the requirements of the Permissible Jurisdiction where the DRs are listed or of the International Exchange(s), are also filed with the Recognized Stock Exchange as soon as reasonably possible but not later than twenty four hours from the date of filing.

Permissible holder

2.15. Permissible holder means a holder of DR, including its Beneficial Owner(s), satisfying the following conditions:

- (a) who is not a person resident in India;
- (b) who is not a Non-Resident Indian (NRI)

Explanation 1: For the purpose of this Circular, 'Beneficial Owner' shall have the same meaning as provided in proviso to sub-rule 1 of rule 9 of Prevention of Money-Laundering (Maintenance of Records) Rules, 2005, as amended by the Central Government vide notification no. G.S.R. 669(E) dated September 18, 2019.

Explanation 2: The Permissible holder, including its Beneficial Owner(s), shall be responsible for ensuring compliance with this requirement.

Voting rights

2.16. Listed Company shall ensure that the agreement entered between the holder of DRs, the Listed Company and the Depository provides that the voting rights on Permissible Securities, if any, shall be exercised by the DR holder through the Foreign Depository pursuant to voting instruction only from such DR holder.

Pricing

2.17. In case of a simultaneous listing of, Permissible Securities on Recognised Stock Exchange(s) pursuant to a public offer / preferential allotment / qualified institutions placement under Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, and DRs on the International Exchange, the price of issue or transfer of Permissible Securities, for the purpose of issue of DRs by Foreign Depository, shall not be less than the price for the public offer / preferential allotment / qualified institutions placement to domestic investors under the applicable laws.

2.18. Where Permissible Securities are issued by a Listed Company or 'transferred by the existing holders', for the purpose of issue of DRs by the Foreign Depository, the same shall be issued at a price, not less than the price applicable to a corresponding mode of issue of such Permissible Securities to domestic investors under the applicable laws.

Obligations of Indian Depository, Foreign Depository and Domestic Custodian

2.19. Indian Depositories, in consultation with each other, shall develop a system to ensure that aggregate holding of DR holders along with their holding, if any, through offshore derivative instruments and holding as a Foreign Portfolio Investor belonging to same investor group shall not exceed the limit on foreign holding under the FEMA and applicable SEBI Regulations. For this purpose, Indian Depositories shall have necessary arrangement with the Domestic Custodian and / or Foreign Depository.

Explanation- For the purposes of Paragraph (2.19), the term 'investor group' shall have the meaning as prescribed to such term in the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019 or amendments thereof.

2.20. Domestic Custodian shall maintain records in respect of, and report to, Indian depositories all transactions in the nature of issue and cancellation of depository receipts, for the purpose of monitoring limits.

2.21. Indian Depositories shall coordinate among themselves and with Domestic Custodian to disseminate:

- (a) the outstanding Permissible Securities against which the DRs are outstanding; and,
- (b) the limit up to which Permissible Securities can be converted to DRs.

2.22. The Foreign Depository shall not issue or pre-release the DRs unless the Domestic Custodian has confirmed the receipt of underlying Permissible Securities.

3. Words and expressions used and not defined in this Circular but defined in the DR Scheme, Securities Contracts (Regulation) Act, 1956 or the Securities and Exchange Board of India Act, 1992 or the Depositories Act, 1996 or the Companies Act, 2013 or the Reserve Bank of India Act, 1934 or the Foreign Exchange Management Act, 1999 or Prevention of Money-Laundering Act, 2002, and rules and regulations made thereunder shall have the meanings respectively assigned to them, as the case may be, in those Acts, unless the context requires otherwise.

Power to remove difficulties

4. In case of any difficulties in the application or interpretation or to relax strict enforcement of the requirements of this Circular, the Board may issue clarifications through guidance notes or circulars after receipt of request from the issuer.
5. The provisions of this circular shall be effective from October 10, 2019 and shall be applicable only to DR issuance by a Listed Company after the effective date.
6. Stock Exchanges and Depositories are advised to:
 - a) make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above circular; and
 - b) bring the provisions of this circular to the notice of the issuers, Domestic Custodians and also to disseminate the same on the website.
7. This circular is being issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992.

Yours faithfully,

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