

September 05, 2005

To,

All Banks Authorised to Deal in Foreign Exchange

Madam/Sir,

Amendment to the "Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993"

Attention of Authorised Dealer (AD) banks is invited to the paragraph 2 of the Annex to the A.P. (DIR Series) Circular No.5 dated August 1, 2005 regarding issue of Foreign Currency Convertible Bonds (FCCB) and Regulations 4 and 5A of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000, as amended from time to time, for issue of American Depository Receipts (ADRs) / Global Depository Receipts (GDRs).

2. In order to bring the ADR/GDR guidelines in alignment with guidelines on domestic capital issues framed by the Securities and Exchange Board of India (SEBI), the Government of India has brought about certain changes to the guidelines on GDR/ADR guidelines by amending the Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993.

3. A copy of the Press Note F.No.15/4/2004-NRI dated August 31, 2005 issued by the Government of India, Ministry of Finance and the Government Notification dated August 31, 2005 is annexed (Annex 1 and 2, respectively).

4. Necessary amendments to the Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) are being issued separately.

5. Authorised Dealer banks may bring the contents of this circular to the notice of their constituents and customers concerned.

6. The directions contained in this circular have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and is without prejudice to permissions / approvals, if any, required under any other law.

Yours faithfully,

Vinay Baijal
Chief General Manager

[A.P. (DIR Series) Circular No. 11 dated September 5, 2005]

No.15/4/2004-NRI
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF ECONOMIC AFFAIRS
CAPITAL MARKETS DIVISION

Press Note

Amendment to the “Issue of Foreign Currency Convertible Bonds and Ordinary Shares (through Depository Receipt Mechanism) Scheme, 1993”.

A Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme was notified by the Government of India on 12th November, 1993. Revisions/modifications in the operative guidelines of the Scheme have been made from time to time.

In order to bring the ADR/GDR guidelines in alignment with SEBI's guidelines on domestic capital issues, it has been decided by the Government to incorporate the following changes to the GDR/ADR guidelines by amending the Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme:-

A. For listed companies

- a) **Eligibility of issuer:** An Indian Company, which is not eligible to raise funds from the Indian Capital Market including a company which has been restrained from accessing the securities market by the Securities and Exchange Board of India (SEBI) will not be eligible to issue (i) Foreign Currency Convertible Bonds and (ii) Ordinary Shares through Global Depository Receipts under the Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993.
- b) **Eligibility of subscriber:** Erstwhile Overseas Corporate Bodies (OCBs) 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 not be eligible to subscribe to (i) Foreign Currency Convertible Bonds and (ii) Ordinary Shares through Global Depository Receipts under the Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993.
- c) **Pricing:** The pricing of Global Depository Receipt and Foreign Currency Convertible Bond 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;

- (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, to consider the proposed issue.

d) **Voting rights:** The voting rights shall be as per the provisions of the Companies Act, 1956 and in a manner in which restrictions on voting rights imposed on Global Depository Receipt issues shall be consistent with the Company Law provisions. RBI regulations regarding voting rights in the case of banking companies will continue to be applicable to all shareholders exercising voting rights.

B. For unlisted companies

Unlisted companies, which have not yet accessed the Global Depository Receipt / Foreign Currency Convertible Bond route for raising capital in the international market would require prior or simultaneous listing in the domestic market, while seeking to issue (i) Foreign Currency Convertible Bonds and (ii) Ordinary Shares through Global Depository Receipts under the Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993.

It is clarified that unlisted companies, which have already issued Global Depository Receipts / Foreign Currency Convertible Bonds 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 Global Depository Receipts / Foreign Currency Convertible Bonds, whichever is earlier.

F.No.15/4/2004-NRI

New Delhi, dated the 31st August, 2005

The Press Information Bureau is requested to give wide publicity to this Press Note.

(U.K.SINHA)
JOINT SECRETARY TO THE GOVERNMENT OF INDIA

Press Information Officer,
Press Information Bureau
Shastri bhawan,
New Delhi

**F.No.15/4/2004-NRI
Ministry of Finance
(Department of Economic Affairs)**

New Delhi, Dated the 31st August, 2005

NOTIFICATION

Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) (Amendment) Scheme, 2005.

G.S.R.No. 553(E), Central Government hereby amend the Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993, namely :-

1. This Scheme may be called the issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) (Amendment) Scheme, 2005.
2. The Scheme shall be deemed to have come into force from the date of publication of Notification; and
3. In the Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993;

After paragraph 3(1), the following sub-paragraph shall be inserted; namely:-

3(1)(A). An Indian company, which is not eligible to raise funds from the Indian capital market including a company which has been restrained from accessing the securities market by the Securities and Exchange Board of India (SEBI) will not be eligible to issue (i) Foreign Currency Convertible Bonds and (ii) Ordinary Shares through Global Depository Receipts under the Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993.

3(1)(B). Unlisted Indian Companies issuing Global Depository Receipts/Foreign Currency Convertible Bonds shall be required to simultaneously list in the Indian Stock Exchange(s).

3(1)(C) Erstwhile Overseas Corporate Bodies (OCBs) 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 not be eligible to subscribe to (i) Foreign Currency Convertible Bonds and (ii) Ordinary Shares through Global Depository Receipts under the Foreign Currency Convertible Bonds and Ordinary Shares(Through Depository Receipt Mechanism) Scheme, 1993.

In Paragraph 5 sub-paragraph (4) (c) shall read as follows :-

5(4) (ca) Listed Companies – The pricing should not be 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;

(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, to consider the proposed issue.

5(4) c(b) Unlisted Companies – The pricing should be in accordance with Reserve Bank of India Regulations notified under Foreign Exchange Management Act, 1999.

In Paragraph 5 (sub-paragraph (4) (e) (i) and (4) (e) (ii) shall be inserted, namely :-
5(4)(e)(i) Listed Companies - The conversion price of the Foreign Currency Convertible Bonds should be in accordance with para 5(4)(ca) ibid.

5(4)(e)(ii) Unlisted Companies - The conversion price of the Foreign Currency Convertible Bonds should be in accordance with Reserve Bank of India Regulations notified under Foreign Exchange Management Act, 1999.

(F.No.15/4/2004-NRI)

(U.K.SINHA)

JOINT SECRETARY TO THE GOVERNMENT OF INDIA

Foot Note :

(1). The Principal Scheme, viz., Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism Scheme, 1993), was published in the Gazette of India, Extraordinary, Part II – Section 3 – Sub-section (i) on the 12th November 1993/Kartika 21, 1915). (Notification GSR No. 700 (E) dated 12th November, 1993).

(2) Amendment in the Original Scheme carried in Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) (Amendment) Scheme. 1999 was published in the Gazette of India, Extraordinary, Part II – Section 3 – Sub-section (i) on the 11th November 1999/Kartika 20, 1921. (Notification GSR.No.764(E), dated 10th November 1999).

(3) Amendment in the Original Scheme carried in Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) (Amendment) Scheme. 1999 was published in the Gazette of India, Extraordinary, Part II – Section 3 – Sub-section (i) on the 19th June 2000/Jyaistha 29, 1922. (Notification GSR.No.544(E), dated 16th June 2000).

(4) Amendment in the Original Scheme carried in Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) (Amendment) Scheme II, 2000 was published in the Gazette of India, (Extraordinary), under Part II – Section 3 – Sub-section (i) on the 14th November, 2000 /Kartika 23, 1922. (Notification GSR.No.865 (E), dated 10th November 2000).

(5) Amendment in the Original Scheme carried in Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) (Amendment) Scheme-III, 2000 was published in the Gazette of India, (Extraordinary), under Part II – Section 3 – Sub-section (i) on 14th November 2000/Kartika 23, 1922. (Notification GSR.No.866 (E), dated 10th November 2000).

(6) Amendment in the Original Scheme carried in Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) (Amendment) Scheme 2001 was published in the Gazette of India, (Extraordinary), under Part II – Section 3 – Sub-section (i) on 21st September, 2001/Bhadra 30, 1923. (Notification GSR.No.687 (E), dated 18th September, 2001).

(7) Amendment in the Original Scheme carried in Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) (Amendment) Scheme, 2002 was published in the Gazette of India, (Extraordinary), under Part II – Section 3 – Sub-section (i) on 13th February 2002/Magha 24, 1923. (Notification GSR.No.100(E), dated 13th February 2002).

(8) Amendment in the Original Scheme carried in Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) (Amendment) Scheme-II, 2002 was published in the Gazette of India, (Extraordinary), under Part II – Section 3 – Sub-section (i) on the 30th July 2002/Sravana 8, 1924. (Notification GSR.No.532(E), dated 29th July 2002).

(9) Amendment in the Original Scheme carried in Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) (Amendment) Scheme III, 2002 was published in the Gazette of India, (Extraordinary), under Part II – Section 3 – Sub-section (i) on 2nd December 2002/Agrahayana 11,1924 (Notification GSR.No.789(E), dated 2nd December 2002).