

Corpsec Hotline

April 03, 2006

INTERNATIONAL LISTINGS GUIDELINES AMENDED - RELAXATION FOR UNLISTED COMPANIES IN THE RED

The Ministry of Finance, Government of India ("MoF"), pursuant to its [notification dated March 31, 2006](#), recently relaxed conditions for 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 in terms of Euro Issue Guidelines (as defined below) issued on May 22, 1998.

The issuance of ADRs, GDRs and FCCBs by Indian companies is 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 (the "**Scheme**") and revisions/ modifications in the operative guidelines of the Scheme have been issued by the MoF from time to time (together with the Scheme, the "**Euro Issue Guidelines**").

The last amendment (prior to the current one) to the Euro Issue Guidelines was made by [notification dated August 31, 2005](#) and certain relaxations were made to the same shortly thereafter (our CorpSec hotlines dated September 1, 2005 [Amendment to Overseas Listing Guidelines](#) and September 16, 2005 [Exemptions Announced to Norms Governing International Listings](#) have analysed the implications of the notification dated August 31, 2005 and the relaxations to the same announced by the MoF on September 14, 2005) in order to ensure that Indian companies are listed on domestic capital markets and to align the pricing of the ADRs, GDRs and FCCBs issues with that of the SEBI guidelines in this regard for domestic capital issues.

The August 31, 2005 notification stipulated that unlisted companies, which had already issued ADRs, GDRs or FCCBs, would compulsorily be required to 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 is earlier.

This stipulation, which necessitated that non-profit making companies which had issued ADRs, GDRs or FCCBs were required to list their shares in the domestic market had raised quite a few concerns amongst the companies in question and the legal and merchant banking communities in India.

After considering the representation made by concerned parties, the MoF has provided some relief to non-profit making unlisted companies.

According to the revised conditions under the notification dated March 31, 2006 amending the Euro Issues Guidelines, all non-profit making unlisted companies, which had issued ADRs, GDRs or FCCBs under the Euro Issue Guidelines of May 22, 1998, are now required to list their shares on the domestic capital markets within three years of turning profitable. However, no fresh issues of ADRs, GDRs or FCCBs, by such companies would be permitted without first listing on the domestic markets. All other conditions contained in the notification dated August 31, 2005 including that for (i) eligibility of issuer and (ii) eligibility of subscriber would continue to be applicable to all companies.

- **Reuben Chacko & Ruetveij Pandya**

You can direct your queries or comments to the authors

Source:

- 1) *Business Standard*, dated April 1/ 2, 2006
- 2) *Press Information Bureau*

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