POLICY

Depository Receipts Scheme 2014

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The Ministry of Finance, vide a notification dated 21 October 2014, has liberalized the scheme relating to Depository Receipts ("**DRs**"). This Scheme, called the Depository Receipts Scheme 2014[1] (the "**2014 Scheme**" or the "**Scheme**"), came into effect from 15 December 2014 onwards.

DRs are foreign currency denominated instruments issued outside India by a foreign depository on the back of an Indian security deposited with a domestic Indian custodian in India.

All types of foreign currency denominated instruments like Global Depository Receipts ("GDRs"), American Depository Receipts ("ADRs") and Foreign Currency Convertible Bonds ("FCCBs") were governed by the 'Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipts Mechanism) Scheme, 1993' ("1993 Scheme"). The 1993 Scheme stands repealed to the extent that it applies to DRs. It will, however, continue to apply to FCCBs.

Some of the highlights of the 2014 Scheme are :

Eligibility :

Any Indian company (listed or unlisted, public or private) or any other issuer of permissible securities or any person holding such securities can issue DRs.

Permissible securities are securities as defined under the Securities Contracts (Regulation) Act 1956 ("SCRA") and also include similar instruments issued by private companies. Securities as defined under SCRA include shares, debentures, derivatives, units of mutual fund, units of collective investment schemes, etc.

The 2014 Scheme allows issue of unsponsored DRs. DRs could be either sponsored or unsponsored. Unsponsored DRs are DRs issued without the specific approval of the issuer of the underlying securities. As per the 2014 Scheme, unsponsored DRs can be issued, provided it gives the holder the right to direct the foreign depository to vote in a particular manner on its behalf, and are listed on an international exchange.

Issue of DRs :

The foreign depositories can issue DRs either through public offering or private placement or in any other manner prevalent in the permissible jurisdiction. Foreign depositories are depositories regulated in permissible jurisdictions. They should not be prohibited from acquiring permissible securities and they should have legal capacity to issued DRs in permissible jurisdiction.

The Scheme allows member countries of the Financial Action Task Force (FATF), whose security marker regulator is a member International Organization of Securities Commissions (IOSCO), as the permissible jurisdictions for issue of DRs. Currently, there are 34 member countries including US, UK, Germany, France, Australia, Japan etc. Please note that the countries in the United Arab Emirates are not members of FATF.

The Scheme allows issuer to issue and holder of permissible securities to transfer permissible securities to foreign depositories for the purpose of issuing DRs. The DRs are eligible to be converted into underlying permissible securities.

Foreign Investment Limits:

The issue or transfer of permissible securities to foreign depositories shall comply with foreign investment limit prescribed under the Foreign Exchange Management Act, 1999. Aggregate of permissible securities issued or transferred to foreign depositories for 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 Foreign Exchange Management Act, 1999.

Pricing:

The permissible securities issued to foreign depository for the purpose of issue of DRs shall not be at a price lesser than the price applicable to the corresponding mode of issue of such securities to domestic investors under the applicable laws.

Rights:

The foreign depository shall be entitled to exercise voting right, if any associated with the permissible securities. Such voting rights can be exercised pursuant to voting instructions from the holders of DRs or otherwise.

The underlying shares of the depository receipts shall form a part of the public shareholding of the company under the SCRA if the holder of DRs has the right to issue voting instruction and the DRs are listed on an international stock exchange. Otherwise, such shares will not be counted for the purpose calculating public shareholding of the company. Accordingly, all unsponsored

DRs form a part of the public shareholding.

Approval:

Any approval which is necessary for issue or transfer of permissible securities to a person resident outside India, shall apply to the issue or transfer of such permissible securities to a foreign depository, for the purpose of issue of DRs. Other than the above referred approval, no other approval from Government agencies is required for issue of DRs under the Scheme.

Role of the Domestic Custodian:

In line with the recent trends in security market, obligation to ensure regulatory compliance has been placed with the domestic custodian. The domestic custodian has to ensure that the issue is in compliance with the Scheme, maintain reports, provide information and file reports to Indian regulatory authorities.

The new Scheme brings lots of positive aspects and can help Indian corporate to raise capital in international market. The Scheme can also give an exit option to the existing investors. However, certain ambiguity in the tax regime applicable to DRs still exists. Certainty of tax treatment is a pre-requisite for efficient take off any financial instrument. Concrete step towards this direction is expected in the next Financial Bill.

[1] *http://finmin.nic.in/the_ministry/dept_eco_affairs/capital_market_div/DepositoryReceiptsScheme2014.pdf*