MCA Updates

• Companies Bill, 2009 introduced in Lok Sabha

SEBI Updates

• SEBI has placed on its website a paper on ‘Proposed policy for 'Client Registration & Trading Operations’ for public comments. We seek your views/suggestions on the said paper and would appreciate to receive the same by August 11, 2009

Proposed Policy For Client Registration and Trading Operations

• Establishment of Connectivity with both depositories NSDL and CDSL – Companies eligible for shifting from Trade for Trade Settlement (TFTS) to normal Rolling Settlement

• Portfolio Managers - Amendment to Additional Information for registration / renewal applications renewal applications

• Procedure for submission of updations in the offer documents filed with SEBI
• Amendment to SEBI (DIP) Guidelines, 2000 amendment to Chapter VIA

TAX Updates

• Service tax on commission paid to Managing Director / Directors by the company -reg
Companies Bill, 2009 introduced in Lok Sabha

Minister for Corporate Affairs, Shri Salman Khurshid introduced the Companies Bill, 2009 in the Lok Sabha. The main objectives of the Companies Bill, 2009 are as follows -

(a) to revise and modify the Companies Act, 1956 in consonance with the changes in the national and international economy;

(b) to bring about compactness by deleting the provisions that had become redundant over time and by
regrouping the scattered provisions relating to specific subjects;

(c) to re-write various provisions of the Act to enable easy interpretation; and

(d) to delink the procedural aspects from the substantive law and provide greater flexibility in rule making to enable adaptation to the changing economic and technical environment.

Earlier last year Companies Bill, 2008 was introduced in the Lok Sabha on 23rd October, 2008. Due to dissolution of the Fourteenth Lok Sabha, the Companies Bill, 2008 lapsed. As the provisions of the Companies Bill, 2008, are broadly considered to be suitable for addressing various contemporary issues relating to corporate governance, including those which have been recently noticed during the investigation into the affairs of some of the companies.

In view of above, the Government decided to re-introduce the Companies Bill, 2008 as the Companies Bill, 2009, without any change except for the Bill year and the Republic year. The Companies Bill, 2009, inter-alia, provides for:

(i) The basic principles for all aspects of internal governance of corporate entities and a framework
for their regulation, irrespective of their area of operation, from incorporation to liquidation and winding up, in a **single, comprehensive, legal framework** administered by the Central Government. In doing so, the Bill also harmonizes the Company law framework with the imperative of specialized sectoral regulation.

(ii) Articulation of **shareholders democracy with protection of the rights of minority stakeholders, responsible self-regulation with disclosures and accountability, substitution of government control over internal corporate processes and decisions by shareholder control**. It also provides for shares with differential voting rights to be done away with and valuation of non-cash considerations for allotment of shares through independent valuers.

(iii) Easy transition of companies operating under the Companies Act, 1956, to the new framework as also from one type of company to another.

(iv) A **new entity in the form of One-Person Company (OPC)** while empowering Government to provide a simpler compliance regime for small companies. Retains the concept of Producer Companies, while providing a more stringent regime for not-for-
profit companies to check misuse. No restriction proposed on the number of subsidiary companies that a company may have, subject to disclosure in respect of their relationship and transactions/dealings between them.

(v) Application of the successful e-Governance initiative of the Ministry of Corporate Affairs (MCA-21) to all the processes involved in meeting compliance obligations. Company processes, also to be enabled to be carried out through electronic mode. The proposed e-Governance regime is intended to provide for ease of operation for filing and access to corporate data over the internet to all stakeholders, on round the clock basis.

(vi) Speedy incorporation process, with detailed declarations/ disclosures about the promoters, directors etc. at the time of incorporation itself. Every company director would be required to acquire a unique Directors identification number.

(vii) Facilitates joint ventures and **relaxes restrictions limiting the number of partners** in entities such as partnership firms, banking companies etc. to a maximum 100 with no ceiling as to professions regulated by Special Acts.
(viii) Duties and liabilities of the directors and for every company to have at least one director resident in India. The Bill also provides for independent directors to be appointed on the Boards of such companies as may be prescribed, along with attributes determining independence. The requirement to appoint independent directors, where applicable, is a minimum of 33% of the total number of directors.

(ix) Statutory recognition to audit, remuneration and stakeholders grievances committees of the Board and recognizes the Chief Executive Officer (CEO), the Chief Financial Officer (CFO) and the Company Secretary as Key Managerial Personnel (KMP).

(x) Companies not to be allowed to raise deposits from the public except on the basis of permission available to them through other Special Acts. The Bill recognizes insider trading by company directors/KMPs as an offence with criminal liability.

(xi) **Recognition of both accounting and auditing standards.** The role, rights and duties of the auditors defined as to maintain integrity and independence of the audit process. Consolidation of financial statements of subsidiaries with those of holding companies is proposed to be made mandatory.
(xii) A single forum for approval of mergers and acquisitions, along with concept of deemed approval in certain situations.

(xiii) A separate framework for enabling fair valuations in companies for various purposes. Appointment of valuers is proposed to be made by audit committees.

(xiv) Claim of an investor over a dividend or a security not claimed for more than a period of seven years not being extinguished, and Investor Education and Protection Fund (IEPF) to be administered by a statutory Authority.

(xv) Shareholders Associations/Group of Shareholders to be enabled to take legal action in case of any fraudulent action on the part of company and to take part in investor protection activities and ‘Class Action Suits’.

(xvi) A revised framework for regulation of insolvency, including rehabilitation, winding up and liquidation of companies with the process to be completed in a time bound manner. Incorporates international best practices based on the models suggested by the United Nations Commission on International Trade Law (UNCITRAL).
(xvii) Consolidation of fora for dealing with rehabilitation of companies, their liquidation and winding up in the single forum of National Company Law Tribunal with appeal to National Company Law Appellate Tribunal. The nature of the Rehabilitation and Revival Fund proposed in the Companies (Second Amendment) Act, 2002 to be replaced by Insolvency Fund with voluntary contributions linked to entitlements to draw money in a situation of insolvency.

(xviii) A more effective regime for inspections and investigations of companies while laying down the maximum as well as minimum quantum of penalty for each offence with suitable deterrence for repeat offences. Company is identified as a separate entity for imposition of monetary penalties from the officers in default. In case of fraudulent activities/actions, provisions for recovery and disgorgement have been included.

(xix) Levy of additional fee in a non-discretionary manner for procedural offences, such as late filing of statutory documents, to be enabled through rules. Defaults of procedural nature to be penalized by levy of monetary penalties by the Registrars of Companies. The appeals
against such orders of Registrars of Companies to lie with suitably designated higher authorities.

(xx) **Special Courts** to deal with offences under the Bill. Company matters such as mergers and amalgamations, reduction of capital, insolvency including rehabilitation, liquidations and winding up are proposed to be addressed by the National Company Law Tribunal/ National Company Law Appellate Tribunal.

The Companies Bill, 2009, on its enactment, would allow the country to have a modern legislation for growth and regulation of corporate sector in India. The existing statute for regulation of companies in the country, viz the Companies Act, 1956 had been under consideration for quite long for comprehensive revision in view of the changing economic and commercial environment nationally as well as internationally. In view of various reformatory and contemporary provisions proposed in the Companies Bill, 2009 together with omission of existing unwanted and obsolete compliance requirements, the companies in the country would be able to comply with the requirements of the proposed Companies Act in a better and more effective manner.

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Deputy General Manager
Market Regulation Department-Division of Policy
E-mail: harinib@sebi.gov.in

The Executive Directors/Managing Directors
of all Stock Exchanges

Dear Sir/Madam,

Sub: Establishment of Connectivity with both depositories NSDL and CDSL – Companies eligible for shifting from Trade for Trade Settlement (TFTS) to normal Rolling Settlement

1. It is observed from the information provided by the depositories that the companies listed in Annexure ‘A’ have established connectivity with both the depositories during the month of May 2009.
2. The stock exchanges may consider shifting the trading in these securities to normal Rolling Settlement subject to the following:

   a) At least 50% of other than promoter holdings as per clause 35 of Listing Agreement are in dematerialized mode before shifting the trading in the securities of the company from TFTS to normal Rolling Settlement. For this purpose, the listed companies shall obtain a certificate from its Registrar and Transfer Agent (RTA) and submit the same to the stock exchange/s. However, if an issuer-company does not have a separate RTA, it may obtain a certificate in this regard from a practicing company Secretary/Chartered Accountant and submit the same to the stock exchange/s.

   b) There are no other grounds/reasons for continuation of the trading in TFTS.

3. The Stock Exchanges are advised to report to SEBI, the action taken in this regard in Section II, item no. 13 of the Monthly/Quarterly Development Report.

Yours faithfully,

HARINI BALAJI

Encl: a/a

Annexure A

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Name of the Company ISIN No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Eastern Treads Limited INE500D01015</td>
</tr>
<tr>
<td>2.</td>
<td>Softech Infinium Solutions Limited INE181K01019</td>
</tr>
</tbody>
</table>
All Registered Portfolio Managers
All Applicants Desirous of Registering as a Portfolio Manager

Dear Sir/ Madam,

Sub: Portfolio Managers - Amendment to Additional Information for registration / renewal applications


2. Pursuant to amendment of SEBI (Portfolio Managers) Regulations 1993 vide notification dated 11 August, 2008, the above mentioned circular is amended as follows:
   i. Point No. 8 of Additional Information shall be replaced with the following:

   “8. Details of the proposed services.
   Please furnish information regarding services you propose to launch under Portfolio Management. Forward a copy of the draft agreement with the client.”

   ii. In Point No. 11 of Additional Information, table on networth statement shall be replaced with following table:

   The statement of networth of ............ based on audited / unaudited accounts as on ............

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Paid up equity capital</td>
<td></td>
</tr>
<tr>
<td><strong>Add</strong>: Free reserves (excluding reserves created out of revaluation)</td>
<td></td>
</tr>
<tr>
<td><strong>Less</strong>: Accumulated losses</td>
<td></td>
</tr>
<tr>
<td><strong>Less</strong>: Deferred expenditure not written off (including miscellaneous expenses not written off)</td>
<td></td>
</tr>
<tr>
<td><strong>Less</strong>: Minimum Capital Adequacy / networth requirement for any other activity undertaken under other SEBI Regulations.</td>
<td></td>
</tr>
<tr>
<td>Networth</td>
<td></td>
</tr>
</tbody>
</table>
3. This circular is issued in exercise of powers conferred by sub-section (1) of section 11 and section 11A of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

4. This circular is available on SEBI website at www.sebi.gov.in under the category “Legal Framework”.

Yours faithfully,

Maninder Cheema

Sanjay Purao
Deputy General Manager
Corporation Finance Department
Division of Issues and Listing
Phone: +91 22 26449612 (D)
Email: sanjayp@sebi.gov.in

To All Registered Merchant Bankers

Dear Sirs,

Sub: Procedure for submission of updations in the offer documents filed with SEBI

1. Securities and Exchange Board of India (hereinafter referred to as “the Board”), vide circular dated February 24, 2009, enhanced the validity of its observation letter issued for public and rights issues to twelve months from three months. The said circular inter-alia stated that before opening of the issue, every issuer shall file an updated offer document with the Board at least one month prior to filing of the same with the Registrar of Companies (hereinafter referred to as “RoC”) or the Designated Stock Exchange (hereinafter referred to as “DSE”), as the case may be, highlighting all changes made in the offer document. It is also stated in the circular that the procedure for submitting such updated offer documents, including what will constitute “significant changes”, “additional fees” etc with the Board, will be specified shortly.

2. Accordingly, in exercise of the powers conferred under sub-section (1) of Section 11 of the Securities and Exchange Board of India Act, 1992, the following instructions are issued to all registered merchant bankers for due compliance:
2.1 The disclosures made in the draft offer document filed with the Board may undergo changes due to developments before the offer document is filed with RoC or DSE, as the case may be. Such changes are generally informed to the Board by the merchant bankers associated with the issue. It has been observed in some cases that the material changes informed by merchant bankers resulted in major deviations from the draft offer document that was available in public domain and called for fresh scrutiny/processing of the draft offer document by the Board. Accordingly, it has been decided to classify the changes in offer documents which may call for (i) filing of updated offer document, with the Board, along with fees and (ii) filing of updated offer document, with the Board, without fees.

(i) **Filing of updated offer document, with the Board, along with fees:**

   a) Changes in the following sections would require filing of updated offer document with the Board, along with payment of a fee of ten thousand rupees for changes per section, subject to the total fees not exceeding one fourth of the filing fees paid at the time of filing the draft offer document with the Board or fifty thousand rupees, whichever is higher:

   **Section 1: Risk Factors:** Any material development which may result in potential risk and may require updation in this section.

   **Section 2: Capital Structure:** An aggregate increase of 5% or more in the shareholding of the promoter or promoter group or an aggregate increase of 5% or more in the shareholding of the top ten shareholders.

   **Section 3: Issue Size:** Any addition or deletion to the objects of the issue resulting in a change in the estimated issue size or estimated means of finance by not more than 10%.

   **Section 4: Management:** Appointment of any new director.

   **Section 5: Promoter Group:** Any addition to the promoter group or group companies.

   **Section 6: Financial Statements:** Any variation in net profit after tax or net loss after tax and/or extraordinary items in excess of 10% over the last updated financials submitted to SEBI.

   **Section 7: Legal and other information:** Any new litigation or any development about a pending litigation which is material in view of the merchant bankers.

   After filing the updated offer document with the Board, the merchant bankers are advised to await confirmation from the Board before proceeding with the issue.

(b) Changes in the following sections would require fresh filing of draft offer document with the Board in terms of clause 2.1.1 of the SEBI
(DIP) Guidelines, 2000, along with payment of filing fees as specified in Schedule IV of the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992:

1. Change in promoter or persons in control of the company.
2. Change in more than half of the board of directors of the company.
3. Change in main object clause of the company.
4. Additions to objects of the issue, which taken together result in a change in the estimated issue size or estimated means of finance by more than 10%.
5. Deletions to objects of the issue, which taken together result in a change in the estimated issue size or estimated means of finance by more than 10%.
6. Any increase or decrease in estimated issue size by more than 10%.
7. Any increase or decrease in the estimated deployment of funds in any of the objects of the issue by more than 10%.
8. Changes which may result in non-compliance of the provisions of the SEBI (DIP) Guidelines, 2000 and the merchant banker intends to seek an exemption under clause 17.2A of the SEBI (DIP) Guidelines, 2000.

(ii) Filing of updated offer document, with the Board, without fees:

Any other change in the offer document which is not covered under point (i) above shall be carried out in the offer document and the updated offer document shall be filed with the Board without payment of any fees.

3. The provisions of this circular shall come into force with immediate effect.

4. All registered merchant bankers are advised to take note of the above and ensure compliance.

5. This circular is also available on SEBI website at www.sebi.gov.in under the categories “Legal Framework” and “Issues and Listing”.

Yours faithfully,

Sanjay Purao
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

SEBI/CFD/DIL/DIP/37/2009/31/07
July 31, 2009
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 hind 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 dispatched 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 preceeding the date of prospectus shall contain the following:

(a). Report of Auditors on the Financial Statements
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

(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 the 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 capitalization 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. Or 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 (xiii) 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,III A,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 XVI A: 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 (B)".

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(xiii). Schedule XXI: Applicable
(xiv). Schedule XXIA and Schedule XXII : Not applicable
(xv). Schedule XXIII,XXIIIA,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”"
“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 IDR s 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.


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.


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.


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: “
Subject: Service tax on commission paid to Managing Director / Directors by the company -reg

Below mentioned issues have been referred to the Board seeking clarifications,-

(i) applicability of service tax under ‘Business Auxiliary service’ on commission paid to Managing Director / Directors (whole time, or Independent) by the company,
(ii) applicability of service tax on Independent Directors who are part of the Board of Directors under ‘Management Consultant service’.

2. Both the matters have been examined by the Board and the clarifications are as under, -

(i) Some Companies make payments to Managing Director/Directors (Whole-time or Independent), terming the same as ‘Commissions’. The said amount paid by a company to their Managing Director/Directors (Whole-time or Independent) even if termed as commission, is not the ‘commission’ that is within the scope of business auxiliary service and hence service tax would not be leviable on such amount.

(ii) The Managing Director / Directors (Whole-time or Independent) being part of Board of Directors perform management function and they do not perform consultancy or advisory function. The definition of management consultant service makes it clear that what is envisaged from a consultant is advisory service and not the actual performance of the management function. The payments made by Companies, to Directors cannot be termed as payments for providing management consultancy service. Therefore, it is clarified that the amount paid to Directors (Whole-time or Independent) is not chargeable to service tax under the category
'Management Consultancy service’. However, in case such directors provide any advice or consultancy to the company, for which they are being compensated separately, such service would become chargeable to service tax.

3. In view of the above, it is clarified that remunerations paid to Managing Director / Directors of companies whether whole-time or independent when being compensated for their performance as Managing Director/Directors would not be liable to service tax.

Pending issues may be resolved in line with the above.

Yours faithfully

(Himanshu Gupta)
Commissioner (Service Tax)
CBEC, New Delhi