

Sub Section – II

Issues by foreign companies in India (Indian Depository Receipts)(IDRs)

This sub-section attempts to cover the basic concepts and questions related to issuance of Indian depository receipts (IDRs) by foreign companies. For full particulars of laws governing primary markets, please refer to the Acts/Regulations/Guidelines appearing in the Legal Framework Section.

1. Whether a foreign company can access Indian securities market for raising funds?

Yes, a foreign company can access Indian securities market for raising funds through issue of Indian Depository Receipts (IDRs)

2. What is an Indian Depository Receipts (IDRs)?

An IDR is an instrument denominated in Indian Rupees in the form of a depository receipt created by a Domestic Depository (custodian of securities registered with the Securities and Exchange Board of India) against the underlying equity of issuing company to enable foreign companies to raise funds from the Indian securities Markets.

3. Which are all the legislations governing IDRs?

Central Government notified the Companies (Issue of Indian Depository Receipts) Rules, 2004 (IDR Rules) pursuant to the section 605 A of the companies Act. SEBI issued guidelines for disclosure with respect to IDRs and notified the model listing agreement to be entered between exchange and the foreign issuer specifying continuous listing requirements.

4. Who is eligible to issue IDRs?

The eligibility criteria given under IDR Rules and Guidelines are as under:-

The foreign issuing company shall have:-

- pre-issue paid-up capital and free reserves of at least US\$ 50 million and have a minimum average market capitalization (during the last 3 years) in its parent country of at least US\$ 100 million;
- a continuous trading record or history on a stock exchange in its parent country for at least three immediately preceding years;
- a track record of distributable profits for at least three out of immediately preceding five years;

- listed in its home country and not been prohibited to issue securities by any Regulatory Body and has a good track record with respect to compliance with securities market regulations.

The size of an IDR issue shall not be less than Rs. 50 crores

5. Which intermediaries are involved in issuance of IDRs?

- Overseas Custodian Bank is a banking company which is established in a country outside India and has a place of business in India and acts as custodian for the equity shares of issuing company against which IDRs are proposed to be issued in the underlying equity shares of the issuer is deposited.
- Domestic Depository who is a custodian of securities registered with the as SEBI and authorised by the issuing company to issue Indian Depository Receipts;
- Merchant Banker registered with SEBI who is responsible for due diligence and through whom the draft prospectus for issuance of he IDR is filed with SEBI by the issuer company.

6. Whether the draft prospectus for IDRs has to be filed with SEBI as in case of domestic issues?

Yes. Foreign issuer is required to file the draft prospectus with SEBI. Any changes specified by SEBI shall be incorporated in the final prospectus to be filed with Registrar of Companies.

7. Whether IDRs can be converted into underlying equity shares?

IDRs can be converted into the underlying equity shares only after the expiry of one year from the date of the issue of the IDR, subject to the compliance of the related provisions of Foreign Exchange Management Act and Regulations issued thereunder by RBI in this regard.

8. Who is responsible to distribute the corporate benefits to the IDR holders?

On the receipt of dividend or other corporate action on the IDRs, the Domestic Depository shall distribute them to the IDR holders in proportion to their holdings of IDRs.

9. Whether there are any other requirements for investing in IDRs?

Yes.

- IDRs can be purchased by any person who is resident in India as defined under FEMA.

- Minimum application amount in an IDR issue shall be Rs. 20,000.
- Investments by Indian companies in IDRs shall not exceed the investment limits, if any, prescribed for them under applicable laws
- In every issue of IDR—
 - (i) At least 50% of the IDRs issued shall be subscribed to by QIBs;
 - (ii) The balance 50% shall be available for subscription by non-institutional.