भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India

CIRCULAR

SEBI/HO/MRD2/DCAP/CIR/P/2020/243 December 18, 2020

To,

1. All recognized Stock Exchanges
2. All Listed Companies through recognized Stock Exchanges
3. All recognized Depositories
4. All recognized Custodians

Dear Sir / Madam,

Subject: Framework for issue of Depository Receipts - Clarifications

1. SEBI vide its Circular No. SEBI/HO/MRD/DOP1/CIR/P/2019/106 dated October 10, 2019 laid down a Framework for issue of Depository Receipts.

2. Para 2.15 of the said circular specifies the following criteria for Permissible holders of Depository Receipts:

   Permissible holder means a holder of DR, including its Beneficial Owner(s), satisfying the following conditions:

   (a) who is not a person resident in India;
   (b) who is not a Non-Resident Indian (NRI)

   Explanation1: For the purpose of this Circular, 'Beneficial Owner' shall have the same meaning as provided in proviso to sub-rule 1 of rule 9 of Prevention of Money-Laundering (Maintenance of Records) Rules, 2005, as amended by the Central Government vide notification no. G.S.R. 669(E) dated September 18, 2019.

   Explanation 2: The Permissible holder, including its Beneficial Owner(s), shall be responsible for ensuring compliance with this requirement.

3. In this regard, based on representations received from market participants, the revised Para 2.15 of the abovementioned Circular is as under:

   Permissible holder means a holder of DR, including its Beneficial Owner(s), satisfying the following conditions:

   (a) who is not a person resident in India;
   (b) who is not a Non-Resident Indian (NRI)

   Provided that the restriction under this Clause shall not apply in case of issue of DRs to NRIs, pursuant to share based employee benefit schemes which are implemented by a company in terms of SEBI (Share Based Employee Benefits) Regulations 2014;

Provided further that the restriction under this Clause shall also not apply in case of issue of DRs by the company to NRIs pursuant to a bonus issue or a rights issue;

Explanation1: For the purpose of this Circular, 'Beneficial Owner' shall have the same meaning as provided in proviso to sub-rule 1 of rule 9 of Prevention of Money-Laundering (Maintenance of Records) Rules, 2005, as amended by the Central Government vide notification no. G.S.R. 669(E) dated September 18, 2019.

Explanation 2: The Permissible holder, including its Beneficial Owner(s), shall be responsible for ensuring compliance with this requirement.

Explanation 3: Except as permitted under the provisos above, NRIs shall neither subscribe to any further issue of DRs nor make any further acquisition of DRs (including of DRs issued prior to October 10, 2019)."

4. After Para 2.12, the following shall be inserted as Para 2.12A:

   2.12A. "The onus of identification of NRIs holders, who are issued DRs in terms employee benefit scheme, would lie with the listed company. The listed company shall provide the information of such NRI DR holders to the designated depository for the purpose of monitoring of limits."

5. Stock Exchanges and Depositories are advised to:

   a) make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above circular; and
   b) bring the provisions of this circular to the notice of the issuers, Domestic Custodians and also to disseminate the same on the website.

6. This circular is being issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992.

Yours faithfully,

Sudeep Mishra
General Manager
Market Regulation Department
+91-22-26449365
sudeepm@sebi.gov.in