Newsflash dated April 27th, 2009 www.aralaw.com

TOPICS

» FOREIGN COMPANIES TO HAVE THOROUGH HEALTH CHECK UP BEFORE IDR ISSUE

Similar to the American Depository Receipts (ADRs) or Global Depository Receipts (GDRs) which have been used by Indian companies to raise funds abroad, Indian Depository Receipts (" IDRs") allows foreign firms to raise capital in India. The Ministry of Corporate Affairs (" MCA") has changed the Companies (Issue of Indian Depository) Rules, 2004 (" IDR Rules") vide notification dated April 15, 2009 so that more financial information is available to Indian investors for the period between a company' s last audited financial statements and the date of opening of its IDR issue. Foreign Companies planning to raise capital in India through IDR route will need to make more disclosures about their financial health in order to shield the Indian local market from the ill-effects of the western recession. The recession has triggered a wave of bankruptcies in the Western world and has led to concerns among the policymakers that some overseas companies which could struggle to raise capital at home could look at India for fund raising using IDRs. The move comes at a time when the sleeping IDR market is showing some signs of revival with a leading name like Standard Chartered Bank (SCB) showing interest in this instrument. SCB which notably escaped the global banking turmoil is now among the strongest banks globally.

Under the earlier norms all firms coming with IDR issues were required to prove their health records for a period between last audited financial statement and the date of opening of IDR issue with a statement from the statutory auditor of the home country in a form prescribed by SEBI which was recently viewed as not sufficiently informative for Indian investors. From now onwards the IDR issuers will have to compulsorily disclose Interim Audited Financial Statement (" IAFS") covering period of 180 days if there is a time gap of more than 180 days between the ending date of last audited financial statement and opening date of IDR issue. Similarly if such time gap is 180 days or less than 180 days, the Issuer Company would required to disclose the changes in respect of financial position in a statement prescribed by SEBI in the prospectus offering IDRs.

However foreign banks planning to raise capital from India following this route got one relaxation in the IDR Rules. Bank incorporated outside India, which is regulated as member of the Bank for International Settlement (BIS) or member of the International Organization of Securities Commissions (IOSCO), a signatory to Multilateral MoU with India, the requirement to furnish interim financial statements as discussed above would be satisfied if the relevant financial statements are based on the limited review report of statutory auditors. This will ease tension for SCB which is regulated by the Financial Service Authority (FSA) in UK, a member of the IOSCO.

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