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» Liberalization of Foreign Technology Agreement Policy

Indian companies paying royalty to foreign firms for technology transfer, use of brand name or trademark will no longer require government approval. The Department of Industrial Policy and Promotion (DIPP) has declared vide Press Note 8 (2009) dated December 16, 2009 that payments for royalty, lump sum fee for transfer of technology and payments for use of trademark/brand name will be under the automatic route with immediate effect.

However, these payments will be subject to Foreign Exchange Management (Current Account Transaction) Rules.

Earlier, automatic approval was permitted only for foreign technology transfer involving payment of lump-sum fee of US \$ 2 million and royalty of 5% on domestic sales and 8% on exports. In addition, where there is no technology transfer involved, royalty up to 2% for exports and 1% for domestic sales was allowed under automatic route on use of trademarks and brand names of the foreign collaborator. Beyond these limits, prior permission of the Project Approval Board in the DIPP was required.

Companies will no longer have to bother about such payments, allowing them to attract greater investments. Royalty and technology transfer payments are often associated with purchase of machinery, components, raw materials and intermediates. A free regime will allow better sourcing and limits on payments will not become a constraint. This is expected to facilitate greater investment in and transfer of technology to India.

- a) Companies listed on the SME exchanges are to be exempted from the eligibility norms applicable for Initial Public Offers (IPOs) and Further Public Offers (FPOs) prescribed in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 (ICDR Regulations).
- b) The minimum IPO application size has been prescribed as Rs. 1 lakh.
- c) The minimum trading lot would be Rs. 1 lakh.
- d) An upper limit of Rs. 25 crore paid up capital has been prescribed in order for a company to be listed on the SME platform/exchange, and a minimum paid up capital of Rs. 10 crore for listing on the equity exchange/segment (Main Board) of NSE and BSE.
- e) The offer document would be filed with SEBI and the exchange. No observations would be

issued by SEBI on the offer documents filed by the Merchant Bankers (MBs).

- f) The MB to the issue would bear the responsibility for market making for a minimum period of three years. MBs would be allowed to do market making along with a disclosed nominated investor (like PE, VC, HNI and QIB). Under this arrangement, all the stock being bought and sold as part of market making will ultimately get transferred to the disclosed nominated investor with whom the MB has a contractual agreement. MB would have to disclose their intention of this arrangement and have it approved by stock exchanges where the issuer SME is listed.
- g) SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 would not be applicable to acquisition of shares through Merchant Banker/Market Maker provided that the Merchant Banker/Market Maker does not have the intention of taking over the management and there is no change in control (direct /indirect) of the company.
- h) A minimum number of investors (for example 50) shall be specified for the IPO only. There shall be no continuing requirement of maintaining the minimum number of investors. However, compliance with the requirements of Companies Act, 1956 needs to be ensured.
- i) No separate registration would be required for brokers intending to service companies listed on the SME exchange/platform.
- j) Companies listed on the SME exchange/platform shall compulsorily migrate to Main Board of NSE and BSE on exceeding the Rs 25 crore post issue paid up capital limit. Further also, if follow on offer/rights issue results in triggering of the above limit (of Rs. 25 crore) then the company would have to migrate to the Main Board.
- k) Investors with holdings of value less than Rs. 1,00,000, are allowed to off load their holding to the Market Maker in that scrip (provided that the investor sells his entire holding in that scrip in one lot). Market Makers will be authorised to buy these shares from such investors.
- l) Financial Statements should be prepared and submitted (as mandated in the Listing Agreement) on a half yearly basis for SMEs, instead of quarterly basis.
- m) All the provisions of clause 49 of the Listing Agreement need to be complied with.

B. Amendments to ICDR Regulations/ Listing Agreement etc.:

a) Introduction of pure auction as an additional book building mechanism

SEBI has decided to introduce an additional method of book building (**for FPOs**) in which the bidders would be free to bid at any price above the floor price and allotment would be on price priority basis and at differential prices. However, retail individual investors in such cases would be allotted shares at the floor price. This would benefit the company by helping it to obtain the price it deserves, the institutional investor in obtaining the number of shares at the price they want and would unburden the retail investors by providing them with a fixed price option and reducing the hassles of price discovery. As the new method is an alternative, the issuer (if it wishes) can have a pure auction for the QIB portion and not the retail portion.

Furthermore, if the issuer desires to place a cap either in terms of number of shares or percentage to issued capital of the company, to ensure wider distribution, the same may be permitted.

b) Requirements for Fast Track Issues (FTIs)

SEBI has relaxed certain requirements of FTIs such as reducing the average market capitalization of public shareholding of the issuer to five thousand crore rupees from ten thousand crore rupees, pegging the annualized trading turnover to free float for companies whose public shareholding is less than 15 percent of the issued capital.

c) **Relaxation from restatement of financial statements**

SEBI has decided that the requirement for disclosure of financials in FPOs of identical instruments quoted on a stock exchange may be brought on par with rights issues (for companies that are eligible to make an issue under fast track, subject to certain conditions). For rights issues, the issuer is required to give only the audited accounts of last financial year and audited or unaudited financials with limited review results for the stub period.

d) **Timelines for submission of financial results by listed entities**

SEBI has mandated disclosure of limited review or audited results within 45 days of the end of the quarter. The timeline for disclosure of audited annual results has also been reduced from 90 days to 60 days for those companies which opt to submit their annual audited results on a stand-alone basis in lieu of the last quarter un-audited financial results. This would make it difficult for companies to inflate their profit and loss statements, since the balance sheet would have the cash flow statements, providing a more realistic picture of the company's financial health

e) **Interim disclosure of Balance Sheet items by listed entities**

Taking note that internationally, most jurisdictions require disclosure of balance sheet items on an interim basis whereas in India companies disclose only interim financial results, SEBI has mandated half-yearly disclosure of balance sheet items with audited figures or unaudited figures with limited review.

f) **Reservation to employees**

SEBI has decided to put a ceiling of Rs. 1 lakh on the value of allotment that can be made to an employee under employee reservation category and to permit reservation upto 5% of the post issued capital instead of 10% of issue size. It is also proposed to extend reservation to employees along with rights issue.

Moreover, SEBI has also allowed discount of not more than 10 percent to employees also under the reserved category only in public issues for application size upto Rs.1,00,000/-.

g) **Voluntary adoption of IFRS by listed entities having subsidiaries**

SEBI has decided to provide an option to all listed entities with subsidiaries to submit their consolidated financial statements as per IFRS. However, such entities shall continue to file their stand alone financials as per Indian GAAP in line with the Companies Act requirements.

h) **QIB Status to insurance funds set up by armed forces**

SEBI has decided to accord QIB status to insurance funds set up by armed forces such as Army Group Insurance Fund.

In case of any clarifications please contact our Capital Market

Team.

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