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In association with **SAB&T inc.**
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Mauritius Global Business Information Update – GBI 04

NEW INVESTMENT AVENUES OPEN UP IN INDIA WITH THE ADVENT OF THE IDRs

The Department of Company Affairs ("DCA") in India has in March 2004 issued the Companies (Issue of Indian Depository Receipts) Rules, 2004 ("Rules"), which paves the way for foreign companies to make public offers of Indian Depository Receipts ("IDRs") in India enabling them to raise resources from the Indian capital market.

IDR means any instrument in the form of depository receipt created by the domestic depository in India against the underlying equity shares of the issuing company.

Eligible companies

1. Companies with a pre-issue paid-up capital and free reserves of at least \$100 million and an average turnover of \$500 million during the three financial years preceding the issue;
2. The issuing company should have been making profits for at least five years preceding the issue and should have declared a dividend of not less than 10 per cent each year for the said period.
3. Such company should also fulfill the eligibility criteria laid down by the Securities and Exchange Board of India (SEBI) from time-to-time.
4. The issuing company should also have a pre-issue debt equity ratio of not more than 2:1.

Listings

All IDR issuances require the prior approval of SEBI. The Rules do not require listing of the IDRs in a foreign bourse. An issuing company would only require listing of IDRs in recognised stock exchanges in India. The listing requirement implies that currently, privately placed IDRs may not be possible.

Restrictions

The IDRs

1. are not redeemable into the underlying equity shares for a period of one year from the date of issue;
2. issued shall not exceed fifteen percent of the company's post issue net worth; and
3. have to be denominated in Indian Rupees, irrespective of the denomination of the underlying securities.



Filings

SEBI and the Registrar of Companies require the filing with their office of the constitution of the company; the by-laws governing the incorporation of the company; address of a principle place of business in India; if there is no place of business in India, then the address for public inspection of documents in India of the certificate of incorporation of the issuing company; copies of agreements entered into by the issuing company, the overseas custodian bank, the domestic depository, which shall *inter alia* specify the rights that are to be passed on to the IDR holders.

Fees

An issuing company looking to get the nod of SEBI should pay a non-refundable fee of \$10,000 along with its application. On being granted the permission, an applicant would have to pay an issue fee of half a per cent of the issue value subject to minimum of Indian Rupees 1 million (about \$25000) where the issue is up to Indian Rupees 10 billion (about \$240 million). Further, where the issue value exceeds this limit, every additional value of issue would be subject to a fee of 0.25 per cent of the issue value.

Persons Eligible to Purchase IDRs

"Persons Resident in India", as defined under the Foreign Exchange Management Act, 1999 of India, are eligible to purchase IDRs and this includes any person or body corporate registered or incorporated in India. This could mean that apart from individuals and companies, even Foreign Institutional Investors ("FII") should be eligible to purchase IDRs. However, Foreign Venture Capital Investors and Venture Capital Funds would not be eligible to invest, as the current regulations governing them permit them to invest only in IPOs of domestic companies.

Tax and other Issues

The payment of dividend to the IDR holders will give rise to withholding tax and tax credit issues for Indian residents, as defined.

IDR holders could have voting rights if the issuing company so desires. The accounts of the issuing company may have to be recast as per the SEBI's guidelines or the listing agreement, so that they are in tune with Indian accounting practices and easier for investors to understand.

IDRs will open up new avenues for foreign companies wanting to acquire or takeover Indian companies. This will facilitate stock-swap transactions where Indian promoters have to be offered stock in foreign companies in excess of current limit of US\$25,000.

The IDR route would be attractive for small and mid-cap foreign companies which are familiar with Indian markets or have promoters of Indian origin. Also, India is an interesting listing option considering the reduced costs of listing and potential valuations that can be achieved.



Investing in the IDRs through the Mauritius International Financial Centre

Foreign investors will be well advised to set up a Mauritius Global Business company to invest in the IDRs. Such a company could either seek to be a sub account of an FII or to be the holding company of a Special Purpose Vehicle incorporated in India.

The Category 1 Global Business Licence company (“GBL1”) is the most appropriate vehicle to invest in India. A GBL1 has access to the India Mauritius tax treaty and is ideal for structuring investments to enable full benefit to be derived of tax treaty benefit like exemption of capital gains tax, reduced withholding taxes on dividends, ect.

***GWMS** is associated with SAB&T Incorporated, Chartered Accountants (SA) (“SAB&T”), www.sab-t.co.za, a 28 directors strong financial services provider with six offices located in the major centres of South Africa and a full fledged member of SC International, an international and widely known group of independent accountants, represented in over 60 countries and with 203 member offices globally.*

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