Brief notes on
AMERICAN DEPOSITORY RECEIPTS
GLOBAL DEPOSITORY RECEIPTS
[ADR/GDR]

What an Idea??	Domestic Offerings: India Inc. raising funds by diluting their holdings through Initial Public Offerings/Follow on Offerings and get set it listed on any Indian Bourses are called as Domestic Offerings. International Offerings: when these shares (in form of Depository Receipts against it) are offered to European Investors and listed Stock Exchange [LSE/Luxemburg] in Europe, called Global Depository Receipts. When these Depository Receipts are targeted to American Investors and listed on American Stock Exchanges [NASDAQ], called American Depository Receipts or International Offerings. The terms FCCBs/ECBs (including partial/optional/non, except fully, Convertible Preference Shares vide A.P. (DIR Series) Circular No. 73 dated June 08, 2007) are debt and so not covered in this Note.
ADR / GDR [Concept and Meaning]	American / Global Depository Receipts are in form of Depositary Receipts (DRs) as negotiable securities issued outside India by a Depository Bank, on behalf of an Indian company, which represent the local Rupee denominated equity shares of the company held as deposit by a Custodian Bank in India. DRs are traded in Stock Exchanges in the US, Singapore, Luxembourg etc. DRs listed and traded in the US markets are known as American Depository Receipts (ADRs) and those listed and traded elsewhere are known as Global Depository Receipts (GDRs). In the Indian context, DRs are treated as FDI. *[Master Circular No. 2/ 2007-2008 dated July 02, 2007.]*
Definitions	ADR *[Reg. 2(c) of Transfer Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2000.]* "American Depository Receipt" (ADR) means a security

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	issued by a bank or a depository in United States of America (USA) against underlying rupee shares of a company incorporated in India. GDR [*Reg. 2(i) of Transfer Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2000.]* "Global Depository Receipt"(GDR) means a security issued by a bank or a depository outside India against underlying rupee shares of a company incorporated in India.
Regulatory Provisions	The issue of ADR/GDR by India Inc. is governed by following legal provisions: 1. Section 6 (3) (b) of Foreign Exchange Management Act, 1999 reads as follows: *6. Capital account transactions. –* *(1) Subject to the provisions of sub-section (2), any person may sell or draw foreign exchange to or from an authorized person for a capital account transaction.* *(2) The Reserve Bank may, in consultation with the Central Government, specify-* *(a) any class or classes of capital account transactions which are permissible;* *(b) the limit up to which foreign exchange shall be admissible for such transactions: Provided that the Reserve Bank shall not impose any restriction on the drawal of foreign exchange for payments due on account of amortization of loans or for depreciation of direct investments in the ordinary courts of business.* *(3) Without prejudice to the generality of the provisions of sub-section (2), the Reserve Bank may, by regulations, prohibit, restrict or regulate the following-* *(a) transfer or issue of any foreign security by a person resident in India;* *(b) transfer or issue of any security by a person resident*

	outside India; 2. Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993. 3. Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2000. *[FEMA 19/2000 RB dated May 03, 2000]* ➢ Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2000. *[FEMA 94/2003 RB dated June 18, 2003]* ➢ Foreign Exchange Management (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2004. *[FEMA 120/RB- 2004 dated July 07, 2004]* ➢ Foreign Exchange Management (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2005. *[FEMA 132/2005 RB dated March 31, 2005]* ➢ Foreign Exchange Management (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2007. *[FEMA 164/2007 RB dated October 9, 2007]* 4. Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000. *[FEMA 20/2000 RB dated May 03, 2000]* 5. Master Circular No. 2/2007-08 dated July 02, 2007on Foreign Investment in India. 6. Policy & Procedures on Foreign Direct Investment in India.
Who can Issue	A company can issue ADR/GDR, if it is eligible to issue shares to persons resident outside India under the FDI Scheme.

	[Master Circular No. 2/ 2007-2008 dated July 02, 2007.]
Who can't Issue	➢ An Indian listed company, which is not eligible to raise funds from the Indian Capital Market including a company which has been restrained from accessing the securities market by the Securities and Exchange Board of India (SEBI) will not be eligible to issue ADRs/GDRs. ➢ Erstwhile OCBs who are not eligible to invest in India through the portfolio route and entities prohibited to buy, sell or deal in securities by SEBI will not be eligible to subscribe to ADRs / GDRs issued by Indian companies. *[Master Circular No. 2/ 2007-2008 dated July 02, 2007.]*
Position of Unlisted Cos.	➢ Unlisted companies which have not yet accessed the ADR/GDR route for raising capital in the international market would require prior or simultaneous listing in the domestic market, while seeking to issue such overseas instruments. ➢ Unlisted companies, which have already issued ADRs/GDRs in the international market, have to list in the domestic market on making profit or within three years of such issue of ADRs/GDRs, whichever is earlier. *[Master Circular No. 2/ 2007-2008 dated July 02, 2007.]*
Issue Ratio	ADRs/GDRs are issued on the basis of the ratio worked out by the Indian company in consultation with the Lead Manager to the issue. *[Master Circular No. 2/ 2007-2008 dated July 02, 2007.]*
Utilisation of Funds / Proceeds	➢ The proceeds so raised have to be kept abroad till actually required in India. ➢ Pending repatriation or utilisation of the proceeds, the Indian company can invest the funds in – (i) Deposits with or Certificate of Deposit or other instruments offered by banks who have been rated by Standard and Poor, Fitch, IBCA or Moody's etc. and such rating not being less than the rating stipulated by Reserve Bank from time to time for the purpose, (ii) Deposits with branch outside India of an authorised dealer in India, and Treasury bills and other monetary instruments with a maturity or unexpired maturity of the instrument of one year or less.

	The ADR / GDR proceeds can be utilised for first stage acquisition of shares in the disinvestment process of Public Sector Undertakings / Enterprises and also in the mandatory second stage offer to the public in view of their strategic importance. The proceeds can be utilised in overseas direct investment in foreign security without any limit. *[1. Master Circular No. 2/ 2007-2008 dated July 02, 2007* *2. Reg. 6(5) of FEM(Transfer or Issue of any Foreign Security)(Amendment) Regulation, 2004 / FEMA 120/ RB – 2004 dated July 02, 2004]*
End Use Restrictions	No end-use restrictions except for a ban on deployment / investment of such funds in Real Estate or the Stock Market. *[Master Circular No. 2/ 2007-2008 dated July 02, 2007.]*
Limit of Offerings	There is no monetary limit upto which an Indian company can raise ADRs / GDRs. *[Master Circular No. 2/ 2007-2008 dated July 02, 2007.]*
Voting Rights on ADR/GDRs [Sec. 86 of C.A. 1956]	➢ Voting rights on shares issued under the Scheme shall be as per the provisions of Companies Act, 1956 and in a manner in which restrictions on voting rights imposed on ADR/GDR issues shall be consistent with the Company Law provisions. ➢ RBI regulations regarding voting rights in the case of banking companies will continue to be applicable to all shareholders exercising voting rights. *[A.P. (DIR Series) Circular No. 11 dated September 5, 2005]*
Pricing of ADR/GDRs	The pricing of ADR / GDR issues should be made at a price not less than the higher of the following two averages: (i) The average of the weekly high and low of the closing prices of the related shares quoted on the stock exchange during the six months preceding the relevant date; (ii) The average of the weekly high and low of the closing prices of the related shares quoted on a stock exchange during the two weeks preceding the relevant date. The "relevant date" means the date thirty days prior to the date on which the meeting of the general body of shareholders is held, in terms of section 81 (IA) of the

	Companies Act, 1956, to consider the proposed issue. [Master Circular No. 2/ 2007-2008 dated July 02, 2007.]
Two way Fungibility Scheme	➢ A limited Two-way Fungibility scheme has been put in place by the Government of India for ADRs / GDRs. ➢ Under this Scheme, a stock broker in India, registered with SEBI, can purchase shares of an Indian company from the market for conversion into ADRs/GDRs based on instructions received from overseas investors. ➢ Re-issuance of ADRs /GDRs would be permitted to the extent of ADRs / GDRs which have been redeemed into underlying shares and sold in the Indian market. ➢ The transaction will be effected through Securities and Exchange Board of India (SEBI) registered stockbrokers as intermediaries <u>Prerequisites:</u> ➢ the shares are purchased on a Recognized Stock Exchange; ➢ the Indian company has issued ADRs/GDRs; ➢ the Shares are purchased with the permission of Custodian of the ADRs/GDRs of the concerned Indian Company and are deposited with the Custodian; ➢ the number of shares so purchased shall not exceed ADRs/GDRs converted into underlying shares and shall be subject to Sectoral Caps as applicable; ➢ the Non-resident Investor, Broker, Custodian and the Overseas Depository comply with the provisions of the Scheme, 1993 and guidelines issued there under by the Central Government from time to time. [1. F.E.M. (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 OR FEMA 41/2001 RB dated March 02, 2001, 2. Operative Guidelines for two-way fungibility under the Scheme. 3. Master Circular No. 02/ 2007-2008 dated July 02, 2007.]
Sponsored ADR/GDR Issue	➢ An Indian company can also sponsor an issue of ADR / GDR. ➢ Under this mechanism, the company offers its

	resident shareholders a choice to submit their shares back to the company so that on the basis of such shares, ADRs / GDRs can be issued abroad. ➢ The proceeds of the ADR / GDR issue is remitted back to India and distributed among the resident investors who had offered their rupee denominated shares for conversion. ➢ These proceeds can be kept in Resident Foreign Currency (Domestic) accounts in India by the resident shareholders who have tendered such shares for conversion into ADR / GDR.
Reporting of ADR/GDRs	➢ *First Return:* The Indian company issuing ADRs / GDRs has to furnish to the Reserve Bank, full details of such issue in the form enclosed in Annex.-1, within 30 days from the date of closing of the issue. ➢ *Quarterly Return:* The Company should also furnish a quarterly return in the form enclosed in Annex.-2, to Reserve Bank within 15 days of the close of the calendar quarter. *[Master Circular No. 02/ 2007-2008 dated July 02, 2007]*
ADR/GDR linked ESOP	➢ Eligible Companies: Indian software company/companies engaged in knowledge based sectors. ➢ Reserve Bank may, on an application made to it by eligible companies, allow resident employees (including working directors) to purchase foreign securities under the ADR/GDR linked Employees' Stock Option (ESOP) Schemes. ➢ The consideration for purchase does not exceed USD 50,000 or its equivalent in a block of five calendar years. ➢ Listed company shall comply with SEBI (Employees Stock Option and Stock Purchase Scheme) Guidelines, 1999. *[A.P. (DIR Series) Circular No. 14 dated October 1, 2004.]*
Overseas Investment through SWAP of ADRs/GDRs	An Indian Party may acquire shares of a foreign company, engaged in bonafide business activity, in exchange of ADRs/GDRs issued to the latter in accordance with the scheme the Scheme, 1993, and the guidelines issued there under from time to time by the Central Government; **Provided that**

	➢ the Indian Party has already made an ADR and / or GDR issue and that such ADRs/GDRs are currently listed on any stock exchange outside India; ➢ such investment by the Indian Party does not exceed amount equivalent to 10 times the export earnings of the Indian Party during the preceding financial year as reflected in its audited balance-sheet. ➢ the ADR and/or GDR issue for the purpose of acquisition is backed by underlying fresh equity shares issued by the Indian Party; ➢ the total holding in the Indian Party by persons resident outside India in the expanded capital base, after the new ADR and/or GDR issue, does not exceed the sectoral cap. ➢ Within 30 days from the date of issue of ADRs and/or GDRs in exchange for acquisition of shares of the foreign company under sub-regulation (1), the Indian Party shall submit a report in form ODG to the Reserve Bank. *[FEM(Transfer or Issue of any Foreign Security)(Amendment) Regulation, 2004 / FEMA 120/ RB – 2004 dated July 02, 2004]*

Annexure - 1

Return to be filed by an Indian Company who has arranged issue of GDR/ADR	
[Refer to paragraph 4(2) of Schedule 1 of Notification No. FEMA 20/2000-RB dated May 3, 2000]	
Instructions : The form should be completed and submitted to the Reserve Bank of India, Foreign Investment Division, Central Office, Mumbai.	
1. Name of the Company	
2. Address of Registered Office	
3. Address for Correspondence	
4. Existing Business (please give the NIC Code of the activity in which the company is	
predominantly engaged	
5. Details of the purpose for which GDRs/ADRs have been raised. If funds are deployed for overseas investment, details thereof	
6. Name and address of the Depository abroad	
7. Name and address of the Lead/ Manager Investment/Merchant Banker	
8. Name and address of the Sub-Managers to the issue	
9. Name and address of the Indian Custodians	
10. Details of FIPB approval (please quote the relevant NIC Code if the GDRs are being	
issued under the Automatic Route)	
11. Whether any overall sectoral cap for foreign investment is applicable. If yes, please give details	
12. Details of the Equity Capital Before Issue After Issue	
(a) Authorised Capital	
(b) Issued and Paid-up Capital	
(i) Held by persons Resident in India	
(ii) Held by foreign investors other than FIIs/NRIs/PIOs/ OCBs (a list	
of foreign investors holding more than 10 percent of the paid-up capital and number of shares held by each of them should be furnished)	
(iii) Held by NRIs/PIOs/OCBs	
(iv) Held by FIIs	
Total Equity held by non-residents	
(c) Percentage of equity held by nonresidents to total paid-up capital	
13. Whether issue was on private placement basis. If yes, please give details of the investors and ADRs/GDRs issued to each of them	
14. Number of GDRs/ADRs issued	
15. Ratio of GDRs/ADRs to underlying shares	
16. Issue Related Expenses	
(a) Fee paid/payable to Merchant Bankers/Lead	

Manager	

(i) Amount (in US$, etc.)	
(ii) Amount as percentage to the total issue	
(b) Other expenses	
17. Whether funds are kept abroad. If yes, name and address of the bank	
18. Details of the listing arrangement	
Name of Stock Exchange	
Date of commencement of trading	
19. The date on which ADRs/GDRs issue was launched	
20. Amount raised (in US $)	
21. Amount repatriated (in US $)	
Certified that all the conditions laid down by Government of India and Reserve Bank of India have been complied with.	
Chartered Accountant	Authorised Signatory of the Company

[Refer to paragraph 4(2) of Schedule 1 of Notification No. FEMA 20/2000-RB dated May 3, 2000]

Annexure – 2

[Refer to paragraph 4(3) of Schedule 1 of Notification No. FEMA 20/2000-RB dated May 3, 2000]	
(to be submitted to the Reserve Bank of India, Foreign Investment Division, Central Office, Mumbai)	
1. Name of the Company	
2. Address	
3. GDR/ADR issue launched on	
4. Total No. of GDRs/ADRs issued	
5. Total amount raised	
6. Total interest earned till end of quarter	
7. Issue expenses and commission etc.	
8. Amount repatriated	
9. Balance kept abroad - Details	
(i) Banks Deposits	
(ii) Treasury Bills	
(iii) Others (please specify)	
10. No. of GDRs still outstanding	
11. Company's share price at the end of the quarter	
12. GDR price quoted on overseas stock exchange as at the end of the quarter	
Certified that the funds raised through ADRs/GDRs have not been invested in stock market or real estate.	
Chartered Accountant	Authorised Signatory of the Company

[Refer to paragraph 4(3) of Schedule 1 of Notification No. FEMA 20/2000-RB dated May 3, 2000]

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