

PAPER – 4 : CORPORATE LAWS AND SECRETARIAL PRACTICE

QUESTIONS

Companies Act, 1956

1. The Articles of Association of Frequency Media Ltd. provides for meeting of Board once in a month of a calendar year. Mr. A attended only the first two meetings of the Board. Referring to the provisions of the Companies Act, 1950 if any, analyse
 - Whether a director is bound to all the meetings of the Board
 - If so, what shall be consequences for long-absence for the meeting.
2. The Board of Directors of Encompass Ltd. has 15 directors and wants to prescribe the quorum for meetings of the Board by the Articles. Referring to relevant provisions of the Companies Act, 1956, advise as are following situation:
 - Whether articles can prescribe the quorum limit.
 - How total strength of the Board is to be determined at a Board meeting ?
 - If out of 15 directors, 13 happen to be interested directors, what shall the quorum for the Board meeting?
 - If all the 15 directors were interested directors, how would you resolve the situation?
3. The Board of Directors of Discovery India Ltd. discovered certain defects in the appointment / qualifications of a director after he had visited the office. The directors wants to know whether defects in appointment / disqualification would affect such contracts where the concerned director participated had participated. Analyse and advise the Board on the situation, referring to provisions if any in the Companies Act, 1956.
4. The Board of Directors of Proportionate Ltd. wants to adopt a system of appointing directors to the Board once in every three years. Is such a system of appointment permissible under the Companies Act, 1956? If so, what would be your advise to the Board in following such a system, by giving an illustration to the method of its implementation.
5. Delegate India Ltd. desires to authorize the managing director to enter into the following transactions:
 - Invest Surplus funds in purchase of shares of other companies.
 - Give donations to charitable trusts, where directors act as trustees.
 - Give loan to firms in which directors are interested.

Analyse the following:

6. The financial year of Incidence Ltd. ends on 31st March, 2007, while that of its subsidiary Dependence Ltd. ends of 30th June, 2007. Dependence Ltd. wants to extend the financial year from 30th June to 31st March, so that financial year of both the companies would coincide. Is it possible for the subsidiary company to do so under the Companies Act, 1956?
7. The Articles of Association of a private company incorporated appointed X as Managing Director for life on 1st June, 2000. The articles also empowered X to appoint successor. X appointed by will Y to succeed him after his death. Answer with reference to the relevant provision of the Companies Act, 1956 and decided Supreme Court judgment:
 - (i) Can Y succeed X as Managing Director after the death of X?
 - (ii) Is it possible for the company in general meeting to remove X from his office during his lifetime?
8. According to the Companies Act, 1956, an individual cannot be auditor of more than twenty companies at a time. Further, out of these twenty companies, not more than ten should be companies having a paid-up capital of Rs.25 lakhs or more. Mr. Excellent is an individual auditor wants to compute the specified number of audits and for this purpose, a list has been drawn out

which identify, the company which shall be/not be taken into account for the purpose of calculating specified number of audits:

- (i) Audit of Private Company
- (ii) Guarantee companies not having share capital
- (iii) Audit of non-profit companies
- (iv) Special Audits
- (v) Audits- of Foreign Companies
- (vi) Branch Audits
- (vii) Company audit where he is appointed as a joint auditor

Besides, he wants to know that as a member of the ICAI, is there any other restriction on him as a matter of self-regulation in the matter of inclusion/exclusion of audit of private companies for the purpose of calculating specified number of audit assignments. Advise.

9. Mr. A has been appointed as a director in a Public Limited Company? Referring to the provisions of the Companies Act, 1956 state:
 - (a) Whether the director should possess any share qualification?
 - (b) If so what is the number of share(s), which he should acquire and at what value?
 - (c) Whether the articles of the company can insist on the director for compulsory acquiring of share qualification?
10. Mr. X is serving in a company in the dual capacity of a director under employee? Referring to the provisions of the Companies Act, 1956. State:
 - (a) Whether there is any prohibition/restriction in serving in the dual capacity?
 - (b) If so whether a director serving as an employee would amount to holding an office or place of profit?
 - (c) Whether the remuneration drawn by the director as an employee of the company would be governed by the provisions relating to managerial remuneration?
 - (d) What would be your answer in the said director is rendering services of a professional nature?
11. (a) Randhir was appointed as the sole selling agent of S Ltd. for a period of five years in a general meeting of the company. Exactly after 1-½ years, S. Ltd. was amalgamated with another company A. Ltd. Randhir was not appointed as the sole selling agent of A. Ltd. S Ltd. paid Randhir Rs. 6 lacs as selling agency commission during the said 1-½ years. Is Randhir entitled to any company and if yes what is the quantum.
 - (b) Under Section 603 of the Companies Act, 1956, what are particulars required for incorporating a prospectus to be issued by an existing foreign company?
12. (a) Due to interrenal problems in the working of M/s Infiting Detergents Ltd., Mr. Satyam, the Executive Director and Mr. Shivam a Director have submitted their resignations and decided to disassociate themselves with the working of the company. Mr. Sundaram, the Managing Director decide to refuse their resignation. Examine whether the MD can compel Mr. Satyam and Mr. Shivam to continue as per provisions of the Companies Act.
 - (b) X Ltd. is managed by Mr. Clever as the MD. Serious allegations have been made by some shareholders and creditors of the company that the MD has misused his position and cost enormous loss to the company. The said shareholders and creditors of the company make a complaint to the Central Government to intervene and provide relief to them. Their main prayer is that the MD should be removed from the post. Explain the powers of the Central Government in this regard.

13. (a) A majority of the Board of Directors of M/s High Value Infotech Ltd. have realized that some of the business activities carried out in the name of the company are not in the interest of either the company or its members. they want that the company should make an application to the Central Government to appoint an Inspector to carry out an investigation so as to find out the whole truth. Explain the steps that should be taken to achieve the purpose and draft the application.
- (b) Some of the shareholders of M/s XYZ Ltd. are contemplating penal action against the Company and its directors for not posting dividend warrants even though the company declared a dividend of 50% on its equity share a couple of months earlier. Examine the inability of the Company and its Directors for the said non-compliance. Also examine whether any defence can be raised by them against the liability.

FEMA, 1999

14. Mr. Technique is an advisor to a company in India, which has JV with an American Company, headquartered in Houston. Mr. Technique visits the Indian Plant once in a month and for the purpose stays in India at Mumbai for a period of 10 – 12 days. Referring to the provisions of the FEMA, 1999 decide the residential status of Mr. Technique.
15. The following are various types of capital account transactions of which specify, the nature of transaction as whether it is permissible or where restrictions cannot be imposed or transactions are altogether prohibited:
 - (a) For amortisation of loan
 - (b) A person resident outside India for making investments in chit fund.
 - (c) Investment by a person resident in India in foreign securities.
 - (d) Maintenance of foreign currency accounts in India and outside India by a person resident in India.
 - (e) Trading in transferable Development Rights (TDR's) by a person resident outside India.
16. What are time limits that have been provided in FEMA, 1999 for disposing of application received in respect adjudication appeals?

Competition Act, 2002

17. A Consumer purchased goods from the relevant market for the purpose of re-sale of such goods and an agreement was entered into for the purpose with the seller to supply goods on a regular basis. After some time, differences arose between the parties over the quality of goods supplied and it was contended by the seller that the buyer bought goods for commercial purpose and re-sell and the goods were purchased not from the relevant geographic or product market and hence the provisions of the Competition Act, 2002 are not applicable in the instant case? Referring to the provisions of the Competition Act, 2002, the contention of the seller tenable?
18. The Association of Truck Operators of India by agreement insisted that members of the association shall not deal with the non-members in transportation of goods. The Association claims that this agreement is entered for the welfare of trade and not for any other purpose. In your opinion whether the agreement would be under the purview of the Competition Act, 2002. Whether your answer would be different if the association attempts to control the provisioning of services rendered by its members.

SCRA, 1956

19. Kutch Stock Exchange is an Association of Persons, registered and recognized under the Securities Contracts (Regulation) Act, 1956. The Central Government wants that persons should manage the stock exchange that does not have role that of a trading or a clearing member and that the stock exchange should be corporatised and de-mutualised. Advise the stock exchange as to how it should reorganize as per the latest amendments in the Securities Contracts (Regulation) Act, 1956.

20. Define the following:

- (1) "Securities
- (2) "Options in securities"

SEBI, 1992

21. An unlisted company is contemplating to make an initial public offering (IPO) of equity shares for which it falls short of the prescribed net tangible assets and track record of distributable profits in terms of section 205 of the Companies Act, 1956. Is there any possibility for the company to make IPO in such situation? If so, what are the other requirements, it should comply with?
22. What are the penalties prescribed in the SEBI Act, 1992 in respect of the following:
 - For failure to furnish information and returns
 - For failure by any person to enter into agreement with clients
 - For failure to redress investor grievances

Interpretation of Statues

23. Explain the principles of grammatical interpretation vis-à-vis logical interpretation especially in the context that the duty of the court is to administer the law as it stand and not to find out whether the law is just or reasonable.
24. A company was using a floor of its premises exclusively as a 'Guest House' for its employees and officers. The electricity tariff was revised on a higher tariff on the ground that it was for a 'commercial purpose'. How would you interpret and construe the meaning of words in this case?
25. A company is offering one of its flats on sale to one of its directors on the condition that 50% of the price to be paid in cash and the rest in equated instalments. Comment on the situation, whether this could be treated as a loan under Section 295 of the Companies Act, 1956.

SUGGESTED HINTS / ANSWERS

1. Frequency of Board meeting: Section 285 requires the Board to meet at least once in every three months irrespective of whether it is the Board of a public company or a private company. And at least four such meetings must be held in every year. However, the Central Government may by notification in the official Gazette, direct that these provisions will not apply in relation to any class of companies or will apply in relation thereto subject to such exceptions, modifications or conditions as may be specified in the notification.

Is a director bound to attend the meeting of the Board? No, he is not so bound. But nonetheless he will be guilty of breach of duty if he fails to attend the Board meetings with reasonable regularity without sufficient cause being shown for non-attendance. Willful non-attendance on his part may give rise to his liability of ground of negligence if it is patently prejudicial either to the company or to the general body of shareholders. Fairly frequent absence from the Board meeting may however, be excused if the entire control is exercised by a single director or if the Board is pretty large in number [*Re. Denham & Co. D 25 Ch. D. 752; Marquis of Bute's case (1892) 2 Ch. 100*]. The fewer the directors, the more onerous is the duty to attend.

Although a director need not attend each Board meeting unless the articles provide otherwise, yet his continuous non-attendance say two attendances followed by two non-attendances, again followed by one attendance and so forth just by way of a guard against infringement of provision of Section 283(1)(g) may render him guilty of breach of trust which may be committed by other directors [*Charitable Corporation vs. Sultan 2 Atk. 400*]. For example, the other director or directors take the advantage of the aforesaid non-attendance by the director and dissipate the company's assets through wasteful and other improper expenses. The absenting director would be responsible for the loss caused to the company, if his presence could otherwise stop their wrongful acts resulting in the said dissipation of assets.

It is true that Section 285 does not prescribe any penalty for non-compliance with the requirements of the Section. Nevertheless, Section 622A may be invoked to deal with such a situation.

2. A quorum is the prescribed minimum number of qualified persons authorised to transact the business at a meeting. In relation to a Board meeting quorum implies fully qualified and disinterested directors who must be present at the meeting so as to enable the Board of which they are the constituents to legally transact the business thereat.

Can the articles of a company fix such a quorum? No, in view of Section 287 which has fixed the quorum of the Board meeting. Accordingly such a quorum is one third of the total strength of Board (any fraction contained in the said one third being rounded off as one) or two directors whichever is higher. The total strength is to be derived after deducting the number of directors whose offices are vacant. Therefore, the Quorum = $\frac{1}{3}$ (of the total strength vacancies). Where total number of directors are 9 and 2 offices of the directors have fallen vacant, we find: $\frac{1}{3}$ of $(9-2) = \frac{1}{3}$ of $7 = 2\frac{1}{3}$ directors. If the fraction of 3^{rd} were to be rounded off as one then 3, i.e. 2+1 directors would constitute the quorum for the Board meetings. If at any time the number of the remaining directors exceeds or is equal to two thirds of the total strength, the number of the remaining directors who are non-interested but present at the meeting, not being less than two shall constitute the quorum. For example, there are in all 15 directors and the Board meeting commences with all the 15 directors. During the currency of the meeting, an item comes up for discussion in respect of which 13 happen to be "interested" directors. In this case, in spite of the excess of the interested directors being more than two-thirds, the prescribed minimum number of non-interested directors constituting the quorum, namely, 2 present at the meeting are to transact the particular item of business.

Now suppose all the 15 directors cited in the above illustration are equally interested in that particular item of business and the time is so vital that but for a decision thereon, the business of the company will be greatly hampered. How to resolve this *impasse*?

The act has not made any direct provision to take with such a situation, but the Article 48 of Table A of Schedule 1 of the Act, provides a remedy. According to the said article, the Board may, whenever it thinks fit, call an extraordinary general meeting. By invoking this Article, the Board should get the aforesaid *impasse* resolved by the shareholders at the general meeting. Since according to Section 173(1) (b), all business in the case of any other meeting than the annual general meeting is to be deemed special, by virtue of sub-section (2) the notice of the extraordinary meeting must annex to it a statement setting out all the material facts concerning the item of business, including, in particular, the nature of the concern or interest there in of every director.

3. All Acts done by the Board meeting by its committee meeting or by any person acting as a director shall be as valid as if every such director or such person had been duly appointed and was qualified to be a director. The validity of all such acts done is not affected even if it discovered later on that there was some defect in the appointment of any one or more of such directors or of any person acting as a director. The said acts will also remain unaffected even the directors are later on discovered to be disqualified (Article 80). This provision has been intended to prevent the validity of transactions from being questioned where there has been a slip in the appointment of a director. But the provision cannot be utilized to ignore or override the substantive provisions pertaining to such appointment. It is applicable only to acts of directors whose appointment or qualification is later on discovered to be faulty. Where, however, their appointments have not taken place at all but they merely choose to act on the company's behalf, the protection prescribed by either Article 80 or Section 290 cannot be invoked [*Morris vs. Danssen (1964) 1, A.E.R. 586 (H, L.)*] This is because the said subsequent discovery must be a discovery of the defect; it must not be discovery of facts which go to constitute the defect [*British Asbestos Co. vs. Body (1903) 2 Ch. 439*].

Suppose a regulation like Articles 80 is included in the Article of association of a company. What would be the possible impact of this? The impact has been summed up in Halsbury's Laws of England (*vide p. 277, 3rd Edition, Vol. VI*) thus: "An Article validating the acts of persons acting as

directors, though it is afterwards discovered that there was a defect in their appointment or qualification, operates not only between the company and outsiders but also as between the company and its members; as where *defecto* directors make a call, summon meetings of the company, elect other directors or allot shares, A *defecto* director may be ordered to furnish a statement of affairs in winding up. Directors can not take advantage of any infirmity in their proceedings in which they have themselves participated; they are stopped as between themselves and the company; they are also stopped from saying they have been improperly appointed if, they have acted after appointment, persons dealing with them who know of the invalidity are likewise stopped."

It should also be noted that Section 290 applies to act of an individual director, whereas Article 80 covers Act of the Board and of its committee.

4. Appointment by proportional representation: But the articles of a public company or a private company which is subsidiary of a public company may adopt the principal of proportional representation for appointing not less than $\frac{2}{3}$ rd if the total number of the directors, whether by a single transferable vote or by a system of cumulative voting or otherwise. In such a case, appointments will be so made once in every three years and interim casual vacancies will be filled in conformity with the provisions of Sections 262 and 265. Cumulative voting denotes that if there are five candidates or distributes his five votes. He can cast all the five votes in favour of one candidate or distribute his five votes among different candidates. This system of voting ensures that the Board will have fair representation of the minority interest.
5. (a) Although Section 292 empowers the Board of Directors of a company to delegate to the Managing Directors the power to invest, in general terms, the funds of the company nevertheless because of the overriding provisions of Section 372(5) (which Section we shall discuss in detail in Study paper 3), the transaction in the instant case would be invalid. Section 372(5) provides that no investment in shares of a company can be made by the Board of Directors of an investing company in pursuance of sub-section (2), unless it is sanctioned by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting except those not entitled to vote thereat, and unless further notice of the resolution to be moved at the meeting has been given to every director in the manner specified in Section 286. Since Section 372 does not provide for delegation of the power, the proposed delegation to the Managing Director in question, notwithstanding the general provision of Section 292, cannot be made.
- (b) In terms of Section 292 the Board of Directors may also delegate to the Managing Director the power to borrow money otherwise than debentures, which it can exercise only by means of resolutions passed at Board meetings. As per Explanation to Section 292(1), it is the arrangement for an overdraft or cash credit that constitutes the exercise of the borrowing power and not the actual utilisation of the arrangement. In other words, an arrangement for an overdraft or cash credit to the tune of say Rs. 5 lakhs constitutes the exercise of the borrowing power and not the actual drawing of this amount on the basis of the overdraft or cash credit. Consequently, the transaction in the instant case shall be valid. But before implementation of the proposal, the Board must pass a resolution at its meeting authorising the Managing Directors to borrow from banks money required for the purpose of the company's business. Also the resolution delegating this power shall specify the total amount outstanding at any one time up to which the delegate may borrow money.

If however, the moneys to be borrowed together with the money already borrowed by the company (apart from temporary loans obtained from the Company's bankers in the ordinary course of business) will exceed the aggregate of the paid up capital of the company and its free reserves, [that is to say, reserves not set apart for any specific purpose] the Board of Directors of the company in question must obtain the consent of the company in its general meeting. Consequently, care should be taken to ensure that while delegating the power to the managing director the aforesaid provision has not been violated; also it should be ensured that the memorandum of association permits borrowing.

- (c) Since according to Section 295(1), (which we shall discuss later) without obtaining prior approval of the Central Government in that behalf, a company can not directly or indirectly lend money to persons including firms, in which directors or their relatives are partners, the company in question must in the first instance seek the Central Government's approval. Secondly since the power to make loans may be delegated under Section 292(1)(e), the Board of Directors of the company in question must pass a resolution therefore and every resolution delegating this power to the Managing Director shall specify the total amount up to which loans may be made by the delegate, the purpose for which loans may be made and the maximum amount of loans which may be made for each such purpose in individual cases. Thirdly, by virtue of Section 291(1), the Board must see with reference to the memorandum and articles whether the company is authorised to exercise the power.
 - (d) Under Section 293(1) (e), the Board of Directors of a public company can contribute or donate to charitable and other funds not directly related to the business of the company or the welfare of its employees any amount the aggregate of which will not, in any financial year exceed Rs. 50,000 or 5% of its average net profits during the three financial years preceding whichever is greater. If this power of the company is not *ultra vires* the memorandum of the company, then only the Board can act in pursuance of the above-mentioned resolution of the company and in so acting, it can authorise the Managing Director to exercise the power on behalf of the Board.
6. In this case, the financial year of the subsidiary precedes that of the holding company by 9 months. In case the subsidiary wants to extend the financial year from 30th June of one year to 31st March of the following year, the financial years of both the holding and subsidiary companies would coincide. But the extension sought for is for 9 months, i.e., from 30th June of one year to 31st March of the following year. Such an extension cannot be granted even by the Registrar under the proviso to sub-section (4) of section 210. It appears that the Central Government can, under this section, direct that the provisions of sub-section (4) of section 210 shall not apply in this case. Similarly, in order to ensure that the financial year of the subsidiary does not precede that of the holding company by more than six months, similar direction can be issued by the Central Government under sub-section (2) of this section, extending the financial year of the holding company from 31st March, 31st December. Here again, the extension will be for a period of nine months. The financial years of the holding and the subsidiary company will not coincide. But, by virtue of direction under sub-section (2) the requirement of clause (c) of sub-section (2) of section 212 will be fulfilled.
7. Assignment of office by director: Any assignment of office made after the commencement of the Act by any director is void [Section 312].

It was held in *Oriental Metal Pressing Works Private Ltd. vs. B.K. Thakoor (A.I.R.) 1960 Bom. 167* that the appointment of one as managing director by the will of one D was void in view of the provisions contained in Section 312, since, according to the High Court, the words 'any assignment' were comprehensive enough to include every assignment to transfer of a director or of the appointment by a director of a person to the office of a director in his place, whether by a deed *inter vivos* or by will. But this ruling has been reversed by the Supreme Court (*vide A.I.R. 1961 S.C. 573*). The Court considers that the word 'assignment' in Section 312 does not mean or include appointment. From its every nature transfer inevitably imports the passing of a thing from one person to another. A transfer without the passage of the thing, even when that is an office is inconceivable. On the other hand, an 'appointment' has nothing to do with passing from one person to another; it connotes the putting in of someone in a vacancy. So transfer and appointment are dissimilar. It would be an unusual statute, which by using a single word intended to prohibit at the same time, two wholly different acts. A construction leading to such a result cannot be permitted.
8. In computing the specified number of audits for the purpose of Section 224(1B), the following audit shall not be taken into account.
 - (a) Audit of private company.

- (b) Audit of Guarantee Companies not having share capital.
- (c) Special Audits.
- (d) Audit of Foreign Companies.
- (e) Branch Audits.

Though the audit of private companies has been excluded for the purpose of calculating the specified number of audits, as a member of ICAI, the Audit of Private Companies will come under the purview of calculating the ceiling limit as a matter of self-regulation.

9. SHARE QUALIFICATION FOR DIRECTORS

It is that number of shares which a shareholder must hold in order to be eligible for election as a director. The Companies Act, 1956 does not prescribe for any share qualification for a director. However, Regulation 66 of Table A provides that the qualification for being a director of a company is the holding of at least one share in the company. The articles of a company usually prescribe for such qualifications so that a director has a personal interest in the company. In the event of such a provision by the articles, it becomes incumbent on the part of every director to hold qualification shares and if does not hold them at the time of his appointment as director, he must acquire them within two months after his appointment as director. *Any provision, made in the articles of the company requiring a person proposed for directorship to hold qualification shares either before appointment or within a third shorter than two months after his appointment will be void. The nominal value of qualification shares must not exceed Rs. 5,000 and if the nominal value of each share is Rs. 5,000 or more than the number of shares prescribed, as qualification will be only one. It is, of course, not necessary for any company to insist upon the holding of shares for the purpose of qualification for directors.* For the purpose of share qualification, the bearer of a share warrant is not deemed to be the holder of the shares mentioned in the warrant (Section 270). A Director acting without qualification shares is punishable with fine, which may extend to Rs. 500/- for every day during which he continues as director (Section 272). The provisions relating to the share qualification of a director do not apply to a private company, unless it is subsidiary of a public company (Section 273): nor do they apply to directors appointed by the Central Government under Section 408.

10. There is no prohibition is contained in the Companies Act for a director acting in the dual capacity of a director and an employee. However, Section 314 puts a restriction for a director while accepting office or place of profit in the company. For this purpose, the director appointment in the office or place of profit need to be approved by the shareholders in the general meeting. A director however, without recourse to Section 314 can render services to the company in his professional capacity on one time basis.
11. (a) Section 294A prohibits payment of compensation to the sold selling agent for the loss of his office in the following cases:
 - (i) where the appointment of the sold selling agent ceases to be valid by virtue of section 294(2A).
 - (ii) where he resigns his office as a result of reconstruction or amalgamation of the company and is appointed as the sole selling agent of the reconstructed company or the body corporate resulting from the amalgamation.
 - (iii) where he resigns his office otherwise than in the circumstances envisaged in the foregoing clause (ii).
 - (iv) where he has been guilty of fraud or breach of trust in relation to, or of gross negligence in the conduct of his duty as the sole selling agent; and
 - (v) where he has instigated or taken part directly or indirectly in bringing about the termination of the sole selling agency.

In this case, Randhir has not been appointed as the sole selling agent of A Ltd. None of the other prohibitions also apply. Hence Randhir would be entitled to compensation.

The amount of compensation payable for the loss of office must in no case exceed the remuneration which he would have earned, if he had been in office for the unexpired residue of his term, or for 3 years, whichever is shorter. The amount thereof is to be calculated on the basis of the average remuneration actually earned by him during a period of 3 years immediately preceding the date on which he had ceased to be in office or his appointment was terminated. In case he had held his office for a period lesser than 3 years, the basis would be the average remuneration that he had earned during such shorter period. The average remuneration earned is $6/1.5 = 4$ lakhs. The compensation payable would be $4 \times 3 =$ Rs. 12 lakhs.

- (b) Under Section 603, (Companies Act, 1956), the prospectus to be issued by an existing or intended Foreign Company in India must be dated and contain the following particulars:

- (a) the instrument constituting or defining the constitution of the company;
- (b) the enactments or provisions under which the company was incorporated;
- (c) the address of the place in India where the said instrument, enactments etc. translation thereof in English if they are in some other foreign language, can be inspected;
- (d) the date on which and the country in which the company was incorporated; and
- (e) whether there is a place of business in India and if so, the address of its principal office.

The provision contained in (a), (b) and (c) above, shall not be applicable if the prospectus is issued more than 2 years after the company had become entitled to commence business.

The prospectus of Foreign Company must contain the matters laid down in Part-I of the Schedule II and set out the report specified in Part II of the Schedule subject always to the provisions of Part-III of the Schedule.

12. (a) There is no provision in the Companies Act, 1956 relating to the resignation of his office by a director. If there is any provision in the articles giving the right to a director to resign at any time, the resignation shall take effect without any need for its acceptance by the Board or the Company in General Meeting. However, it is not clear what will be the position if the articles do not contain any provision relating to resignation of directors. One view is that the ordinary rule of common law as regards resignation by an officer or agent must be followed namely, resignation by notice given either to the Company or the Board and acceptance of the same. (*Glossop V. Glossop*; *Latchford Premier Cinema Ltd. V. Ennioin*). Another view is where the resignation says that it is to take effect immediately, acceptance is not necessary unless the articles or any provision of law makes it necessary. Further the directors do not have the power to refuse the resignation of the co-director unless such a provision is there in the Articles of Association. (*Re. Neokratine Safety Explosive Co. of New Ltd. (1891)*). Hence in the absence of contrary provision in Articles, the Company (i.e., Mr. Sundaram) can not compel Mr. Shivam to continue as a director.

However, the position is somewhat different in the case of a managing or whole time director. In such a case a formal acceptance of resignation by the company is essential so as to make it complete and effective. This is because the managing director occupies two positions (i) one that of a director and (ii) the other that of a whole time employee. An employee cannot give up office at his pleasure simply by giving notice. The notice or letter of resignation is required to be accepted by the company and the officer concerned has to be relieved of his duties and responsibilities, attaching to the office which he has resigned from [*Achuta Pai Vs. registrar of Companies (1956) 36 Comp. Case 598*]. Thus as the Executive Director, Mr. Satyam is full time employee of the company, the managing Director (Mr. Sundaram) can compel him to work as per the terms of employment agreed into at the time of appointment.

- (b) On receipt of the complaint from some of the shareholders and creditors of X Ltd., that its managing director Mr. Clever has misused his office and thereby caused loss to the company, the Central Government, if satisfied with the contents of the complaint may make a reference to the Company Law Board with a request to inquire into the case and record a

finding whether or not Mr. Clever is a fit and proper person to hold the office of Managing Director. The application made to CLB must contain a concise statement of the circumstances and material as the Central Government may consider necessary for the purpose of the enquiry. The Company Law Board will hear both the parties viz. (1) The Central Government and (2) The Respondent Mr. Clever as well as the company. The CLB has powers to pass any interim order to the effect that the respondent Mr. Clever shall not discharge any of the duties of his office until further orders and appointment suitable person in place of the respondent. At the conclusion of the hearing the CLB will record its finding. If the finding of the CLB is against the respondent, the Central Government, by order, shall remove him from office, as provided in Section 388E(1) of the Companies Act, 1956. The person against whom such an order is passed is debarred from holding the post of director etc., for a period of 5 years from the date of order of removal. Also no compensation is payable to him for termination of office.

13. According to Section 237 of the Companies Act, 1956, the Central Government shall appoint one or more persons as inspectors to investigate the affairs of the company if the company by a special resolution or the court by an order declares that the affairs of the company should be investigated. The Central Government may also appoint an inspector if in the opinion of the Company Law Board, there are circumstances suggesting that:

- (i) the business of the company is being conducted with intent to defraud creditors, members or any other persons.
- (ii) the persons concerned in the formation of the company or the management of its affairs have been guilty of fraud, misfeasance or misconduct towards the company or its members.
- (iii) the members have not been given all information with respect to its affairs.

Thus the directors of High Value Infotech Ltd. have three options before them to get the company's affairs investigated. Firstly, they can get a special resolution passed in a general meeting of the company. Secondly they can approach the court with a petition so that the court directs the Central Government to order investigation. The directors can also approach the Company Law Board with a petition. However, the Central Government may order an investigation on the recommendation of the Company Law Board. Thus the Central Government has a discretionary power in the last case; whereas in the first two instances the Central Government has no such discretion and it has to order the investigation.

Draft Application:

High Value Infotech Ltd. (Address)

Dated 1st April, 2001

The Secretary,
Department of Company Law Affairs,
New Delhi

Sir,

At a meeting of the shareholders of the company, the members have passed the following special resolution unanimously:

"Resolved that the Central Government be approached to appoint an Inspector to carry out an investigation whether the following activities carried out in the name of the Company are or are not in the interest of either the company or its members.

"(Name a couple of activities)"

The said unanimous resolution was passed at an extraordinary general meeting of the Company held on 10th March, 2001.

It is, therefore, prayed that the Central Government be pleased to appoint as per Section 237 of the Companies Act an inspector to investigate the affairs of the company regarding the matters mentioned in the above resolution and communicate its decision to the company.

The Challan evidencing the payment of Rs. s per the companies (Fees on Application) Rules, 1989 is enclosed.

Your respectfully,

For and on behalf of High Value Infotech Ltd.

Secretary.

- (b) According to Section 207 of the Companies Act, 1956, as amended where a dividend has been declared by a company, but has not been paid or the dividend warrant has not been posted within 30 days from the date of declaration, to the shareholders, every director of the company shall if he is knowingly a party to the default, be punishable with simple imprisonment for a term which may extend to three years and shall also be liable to a fine of Rs. 1,000/- per day during which such default continues. The company is liable to pay simple interest at 18% per annum during the period for which such default continues. Thus the shareholders of M/s Indian Computes Dot Com Ltd. can take penal action against the company and its directors as provided in Section 621 of the Act, (i.e., by filing a complaint in the Court having jurisdiction over the company).

The company and its directors can raise the following defences in case of a prosecution:

- (a) the dividend could not be paid by reasons of the operation of any law.
- (b) where the shareholder has given a director to the company regarding payment of dividend and the same cannot be complied with.
- (c) there is a dispute regarding the right to receive the dividend.
- (d) the dividend has been lawfully adjusted by the company against the dues from the shareholders.
- (e) for any other reason, the non-posting was not due to any default on the part of the company.

FEMA, 1999

14. Under Section 2(v)(a) a person to become resident under FEMA, 1999 only if he/she resided in India for more than 182 days. Stay is a physical attribute while residing denotes permanency. It is therefore doubtful and debate able to state Mr. Technique is a resident in India.

15. Amortization of loan – A transaction with no restriction.

Engaging in the business of chit fund – Prohibited transaction.

Trading in TDR's - Prohibited Transaction.

Maintenance of Foreign currency Accounts by a person resident in India – Permissible transaction.

Loans and Overdrafts by a person resident in India to a person resident outside India – Permissible transaction.

Engaging in agricultural or plantation activities – Prohibited transaction.

16. ADJUDICATION AND APPEAL

Time limits

Section No.	Obligation	Time Limit
Section 14	Penalty to be paid	Within 90 days from the date on which notice for payment of penalty is served.
Section 15	Compounding of Contravention	Within 180 days of receipt of application by Directorate of Enforcement.
Section 16	Complaint under Section 16(1) to	Within 1 year of receipt of complaint.

	be dealt by Adjudicated Authority	
Section 17	Appeal to Special Director (Appeals)	Within 45 days from receipt of order.
Section 19	Appeal to Appellate Tribunal	Within 45 days from receipt of order.
Section 19(5)	Appeal to be dealt with by Appellate Tribunal	Will try to dispose off the appeal within 180 days from receipt of appeal.
Section 35	Appeal to High Court	Within 60 days of communication of order or decision.

Competition Act, 2002

17. It is noteworthy that the definition of consumer is substantially the same has given to the expression under Section 2(d) of the consumer protection Act, 1986. The difference is that under clause (i), in the Competition Act, it uses the words "whether such purchase of goods is for the resale of for any commercial purpose or for personal use" in places of the words "but does include a person who obtains such goods for resale of for any commercial purpose", as in the Consumer Protection Act. Likewise, in clause (ii), the words used in the Competition Act are "whether such hiring or availing of services is for any commercial purpose or for personal use" in place of the words "but does not include a person who avails of such services for any commercial purpose" as in the Consumer Protection Act. Thus, the interpretation of "consumer" in the Consumer Protection Act will be the same as in Competition Act. In the latter, "consumer" will also include a person who purchases goods for resale or for any commercial purpose or for personal use.

18. Agreement [Section 2(b)]

"Agreement" includes any arrangement or understanding or action in concert,—

- (i) whether or not, such arrangement, understanding or action is formal or in writing; or
- (ii) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings;

The objective of the Competition Policy is to promote efficiency and maximising the welfare of nation and to create a contusive business environment, which promotes healthy market competition. An agreement which prohibits an enterprise or person or their association for entering into an agreement in respect of production, supply, distribution, storage, acquisition or control of boosts or services, which causes are likely to cause an appreciable adverse affect on competition. Such agreements entered in contravention of the above are void. These agreements are presumed to have an appreciable adverse affect on competition.

Agreements may be horizontal agreements and vertical agreements. Horizontal agreements referred to agreements among competitors and vertical agreements to an actual or potential relationship buying or selling to each other. Horizontal agreements relating to prices quantities, bids and market sharing are particularly anti-competitive. Vertical agreements like tie in arrangements; exclusive supply/distribution agreements and refusal to deal are also generally anti-competitive. Section 3 of the Competition Act, 2002 regulates and prohibits all types of agreements, which have the effect to restrict competition, and prevents those, which have such likely effect.

Cartel [Section 2(c)]

"Cartel" includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services;

The term cartel like agreement has been given an inclusive meaning. Thus an association for the welfare of the trade or formed for any other purpose not mentioned in the aforesaid definition will not be a cartel. It is only when an association, by agreement amongst themselves, limits control

or attempts to control the production, distribution, sale or price of, or, trade in goods or provision of services, that it will be a cartel.

SCRA, 1956

19. Procedure for corporatisation and demutualisation.(Section 4B)

It provides (1) All recognised stock exchanges referred to in section 4A shall, within such time as may be specified by the Securities and Exchange Board of India, submit a scheme for corporatisation and demutualisation for its approval:

Provided that the Securities and Exchange Board of India may, by notification in the Official Gazette, specify name of the recognised stock exchange, which had already been corporatised and demutualised, and such stock exchange, shall not be required to submit the scheme under this section.

(2) On receipt of the scheme referred to in sub-section (1), the Securities and Exchange Board of India may, after making such enquiry as may be necessary in this behalf and obtaining such further information, if any, as it may require and if it is satisfied that it would be in the interest of the trade and also in the public interest, approve the scheme with or without modification.

(3) No scheme under sub-section (2) shall be approved by the Securities and Exchange Board of India if the issue of shares for a lawful consideration or provision of trading rights in lieu of membership card of the members of a recognised stock exchange or payment of dividends to members have been proposed out of any reserves or assets of that stock exchange.

(4) Where the scheme is approved under sub-section (2), the scheme so approved shall be published immediately by –

- (a) the Securities and Exchange Board of India in the Official Gazette;
- (b) the recognised stock exchange in such two daily newspapers circulating in India, as may be specified by the Securities and Exchange Board of India,

and upon such publication, notwithstanding anything to the contrary contained in this Act or any other law for the time being in force or any agreement, award, judgment, decree or other instrument for the time being in force, the scheme shall have effect and be binding on all persons and authorities including all members, creditors, depositors and employees of the recognised stock exchange and on all persons having any contract, right, power, obligation or liability with, against, over, to, or in connection with, the recognised stock exchange or its members.

(5) Where the Securities and Exchange Board of India is satisfied that it would not be in the interest of the trade and also in the public interest to approve the scheme under sub-section (2), it may, by an order, reject the scheme and such order of rejection shall be published by it in the Official Gazette:

Provided that the Securities and Exchange Board of India shall give a reasonable opportunity of being heard to all the persons concerned and the recognised stock exchange concerned before passing an order rejecting the scheme.

(6) The Securities and Exchange Board of India may, while approving the scheme under sub-section (2), by an order in writing, restrict-

- (a) the voting rights of the shareholders who are also stock brokers of the recognised stock exchange;
- (b) the right of shareholders or a stock broker of the recognised stock exchange to appoint the representatives on the governing board of the stock exchange;
- (c) the maximum number of representatives of the stock brokers of the recognised stock exchange to be appointed on the governing board of the recognised stock exchange, which shall not exceed one-fourth of the total strength of the governing board.

(7) The order made under sub-section (6) shall be published in the Official Gazette and on the publication thereof, the order shall, notwithstanding anything to the contrary contained in the Companies Act, 1956, or any other law for the time being in force, have full effect.

(8) Every recognised stock exchange, in respect of which the scheme for corporatisation or demutualisation has been approved under sub-section (2), shall, either by fresh issue of equity shares to the public or in any other manner as may be specified by the regulations made by the Securities and Exchange Board of India, ensure that at least fifty-one per cent. of its equity share capital is held, within twelve months from the date of publication of the order under sub-section (7), by the public other than shareholders having trading rights:

Provided that the Securities and Exchange Board of India may, on sufficient cause being shown to it and in the public interest, extend the said period by another twelve months.'

20. (a) "Securities" include-
- (i) Shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;
 - (1) derivative;
 - (2) units or any other instruments issued by any collective investment scheme to the investors in such schemes;
 - (ii) rights or interests in securities;
- (b) "option in securities" means a contract for the purchase or sale of a right to buy or sell, or a right to buy and sell, securities in future, and includes a teji, a mandi, a teji mandi, a galli, a put, a call or a put and call securities;
21. An unlisted company not complying with any of the conditions specified in Clause 2.2.1 may make an initial public offering (IPO) of equity shares.
- (a) Market makers undertake to offer buy and sell quotes for a minimum depth of 300 shares;
 - (b) Market makers undertake to ensure that the bid-ask spread (difference between quotations for sale and purchase) for their quotes shall not at any time exceed 10%.
 - (c) The inventory of the market makers on each of such stock exchanges, as on the date of allotment of securities, shall be at least 5% of the proposed issue of the company).
22. Penalty for failure to furnish information, return, etc. (Section 15A) : If any person who, is required under this Act or any rules or regulations made thereunder.
- (a) to furnish any document, return or report to the Board, fails to furnish the same, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.
 - (b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.
 - (c) to maintain books of accounts or records, fails to maintain the same, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

Penalty for failure by any person to enter into agreement with clients (Section 15B): If any person who, is registered as an intermediary and is required under this Act or any rules or regulations made thereunder, to enter into an agreement with his client, fails to enter into such agreement, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

Penalty for failure to redress investors' grievances (Section 15C): If any listed company or any person who is registered as an intermediary, after having been called upon by the Board in writing, to redress the grievances of investors, fails to redress such grievances within the time specified by the Board, such company or intermediary shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

23. Interpretation may be either grammatical or logical. Grammatical interpretation concerns itself exclusively with the verbal expression of law. It does not go beyond the letter of the law. Logical interpretation on the other hand, seeks more satisfactory evidence of the true intention of the legislature. In all ordinary cases, the grammatical interpretation is the sole form allowable. The court cannot take from or add to modify the letter of the law. However, where the letter of the law is logically defective on account of ambiguity, inconsistency or incompleteness, the court is under a duty to travel beyond the letter of law so as to determine from the other sources, the true intentions of the legislature. Further a statute is enforceable at law, however, unreasonable it may be. The duty of the court is to administer the law as it stands. It is not within its jurisdiction to see whether the law is just or unreasonable. However, if there are two possible constructions of a clause, one a mere mechanical construction based on the rules of grammar and the other which emerges from the setting in which the clause appears and the circumstances in which it came to be enacted and also the words used therein, the courts may prefer the second construction which though may not be literal may be a better one.
24. For giving a plain and literal meaning to each of the words in the expression "exclusively used as a private residential premises", it is difficult to hold that the guesthouse maintained by a company or commercial undertaking would come within the aforesaid expression. It connotes that the premises must be exclusively used as a residential premises which in other words would mean where the premises which were used by any person privately for its own residence for a sufficiently continued period and not a premises where a person could come and spend a day or a night and then go back. Guesthouses were maintained by companies or commercial undertakings as a part of their commercial ventures and such premises could not be held to be meant for exclusive use as private residential premises.
25. (i) This transaction does not per se amount to a loan so as to violate Section 295 of Companies Act, 1956. The burden of proving otherwise lies with the prosecution. (M.G. Electronics Components Ltd v. Asst. Registrar of Companies).
- (ii) The deposit of the cost of purchase of property cannot be regarded as a loan or advance to the M.D. or book debt attracting the provisions of section 295 or section 296 of the Companies Act. It is no concern of the M.D. on what terms the company secures premises for residential accommodation for him.
- (iii) In a petition in Dr. Fredie Ardeshir Mehta v. Union of India seeking quashing of a prosecution launched under Section 295, the Bombay High Court came to the conclusion that a company selling one of its flat to one of its directors on receiving half price in cash and agreeing to accept the balance in instalments does not give a loan to the director. It is accredit sale. It cannot continued be described even as an indirect loan. In view of this decision, the transaction in question does not amount to a loan to a director requiring approval of the Central Government.

PRE-EXAMINATION NOTES

AMENDMENTS IN SEBI (DIP) GUIDELINES, 2000

1. SEBI/CFD/DIL/DIP/20/2006/3/4 (April 3, 2006)

Sub: Introduction of new Chapter VIA in the SEBI (DIP) Guidelines, 2000

1. The Central Government, on February 23, 2004 issued the Companies (Issue of Indian Depository Receipts) Rules, 2004 (IDR Rules), under Section 605A of the Companies Act, 1956. Under Rule 4(d) of the IDR Rules, SEBI has the power to specify eligibility criteria for IDR issuers in addition to what is contained in the IDR Rules. Under Clause 9 to the Schedule to the IDR Rules, SEBI can specify any information to be included in the prospectus from time to time.
2. Accordingly, for companies desirous of coming out with IDR issues, a new Chapter VI A has been added in the SEBI DIP Guidelines, 2000, containing the guidelines to be followed by an IDR issuer for coming out with such issue. A copy of Chapter VIA is enclosed herewith in the Annexure.
3. This circular is being issued in exercise of powers conferred by Sections 11(1) and 11A of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

CHAPTER VIA OF THE SEBI (DIP) GUIDELINES, 2000

ISSUE OF INDIAN DEPOSITORY RECEIPTS (IDRs)

PART I – GENERAL REQUIREMENTS

6A.1 PRELIMINARY

The guidelines given in this chapter are in addition to the provisions of the Companies (Issue of Indian Depository Receipts) Rules, 2004 (hereinafter referred to as the IDR Rules) and not in derogation thereof.

6A.2 ELIGIBILITY FOR ISSUE OF IDRS

No issuer shall make an issue IDRs unless:

- (i) it fulfills the eligibility criteria as specified in Rule 4 of the IDR Rules
- (ii) It is listed in its home country;
- (iii) it has not been prohibited to issue securities by any Regulatory Body; and,
- (iv) it has good track record with respect to compliance with securities market regulations.

6A.3 INVESTORS

1. NRIs and FIIs cannot purchase or possess IDRs unless special permission of the Reserve Bank of India is taken.
2. Investments by Indian Companies in IDRs shall not exceed the investment limits, if any, prescribed for them under applicable laws.
3. Automatic fungibility of IDRs is not permitted.
4. An issue of IDRs is open to QIBs (as defined in clause 2.2.2.B. of these Guidelines) only.
5. The minimum application amount in an IDR issue shall be Rs. 2,00,000/-
6. Procedure to be followed by each class of applicant for applying shall be mentioned in the prospectus.

6A.4 MINIMUM ISSUE SIZE:

The size of an IDR issue shall not be less than Rs.50 crores

6A.5 MINIMUM SUBSCRIPTION:

If the company issuing the IDRs does not receive the minimum subscription of 90% of the issued amount on the date of closure of the issue, or if the subscription level falls below 90% after the closure of issue on account of cheques having being returned unpaid or withdrawal of applications, the company shall forthwith refund the entire subscription amount received. If there is a delay beyond 8 days after the company becomes liable to pay the amount, the company shall pay interest at the rate of 15% per annum for the period of delay.

PART II - DISCLOSURES IN A PROSPECTUS FOR IDRs

A prospectus for issue of IDRs shall contain all details as prescribed herein.

6A.6 GENERAL INSTRUCTIONS WITH RESPECT TO CONTENTS OF THE PROSPECTUS:

1. The Merchant Banker has the option to file the draft prospectus as a public filing or a confidential filing. In both the cases, the initial fee as prescribed in Rule 5 (i) (b) of the IDR Rules shall accompany such filing.
2. The contents of the prospectus including the financial statements of the issuer company, its subsidiaries and associates shall be in plain English.
“Associate” for the purpose of this chapter would mean “associate” as defined in Indian GAAP or IFRS or US GAAP in which the financial statements of the issuer are disclosed.
3. The prospectus shall contain all material information which shall be true and adequate so as to enable the investors to make informed decision on the investments in the issue.
4. The prospectus shall also contain the information and statements specified herein
5. The issuing company shall, through a Merchant Banker file a prospectus or letter of offer certified by two authorized signatories of the issuing company, one of whom shall be a whole-time director and other the Chief Accounts Officer or the Chief Financial Officer, stating the particulars of the resolution of the Board or the shareholders by which it was approved, with the SEBI and Registrar of Companies, New Delhi, before such issue. They shall also certify that all the disclosures made in the prospectus are true and correct.
6. The agreement made with the domestic depository shall also be furnished along with the prospectus.

6A.7. DISCLAIMER

1. A disclaimer shall be made by the Merchant Banker (including a due diligence certificate) in the format specified in Schedule III
2. A statement will be made by the Issuer disclaiming responsibility for statements made otherwise than in the prospectus, as follows:
“Our company, our directors and the Merchant Banker accept no responsibility for statements made otherwise than in the prospectus or in the advertisements or any other material issued by at our instance and anyone placing reliance on any other source of information including our website _____ shall be doing so at his or her own risk.”

6A.8 THE ISSUE

Summary of the terms of offer shall be incorporated, including:

1. Offer and Listing Details
2. Plan of Distribution
3. Markets
4. Selling Shareholders, if any
5. Dilution
6. Expenses of the Issue

6A.9 FORWARD LOOKING STATEMENTS

A paragraph on the statements that are forward looking statements and not matters of historical facts shall be incorporated. A statement on the sources of data used in the prospectus and their accuracy shall also be incorporated. A line should also be incorporated on whether these have been independently verified.

6A.10 GENERAL INFORMATION

1. Definitions/terms used in the prospectus
2. Name, address and contact information of the registered office of the company;
3. Name, address and contact information of the Domestic Depository, the Overseas Custodian Bank with the address of its office in India, the Merchant Banker, the Underwriter to the issue, Advisors to the issue and any other intermediary which may be appointed in connection with the issue of IDRs;
4. Interest of Experts and Counsel
5. Name, address and contact information of the compliance officer in relation to the issue of IDRs. The compliance officer should be placed in India
6. Name, address and contact information of Stock Exchanges where applications are made or proposed to be made for listing of the IDRs;
7. Disclosure about provisions relating to punishment for fictitious applications;
8. Statement/declaration for refund of excess subscription
9. Statement that an interest of 15% p.a. would be paid to the investors if the allotments letters / refund orders are not despatched within 30 days of the closure of the public issue
10. Declaration about issue of allotment letters/certificates/ IDRs within the stipulated period;
11. Date of opening of issue;
12. Date of closing of issue;
13. Method and Expected Timetable of the issue
14. A statement that subscription to the issue shall be kept open for atleast 3 working days and not more than 10 working days
15. Date of earliest closing of the issue;
16. Declaration by the Merchant Banker with regard to adequacy of resources of underwriters to discharge their respective obligations, in case of being required to do so;
17. A statement by the issuing company that all moneys received out of issue of IDRs shall be transferred to a separate domestic bank account, name and address of the bank and the nature and number of the account to which the amount shall be credited;
18. Details of availability of prospectus and forms, i.e., date, time, place etc;
19. Amount and mode of payment seeking issue of IDRs
20. Disclosure on Investor Grievances and Redressal System:
 - a. The arrangements or any mechanism evolved by the company for redressal of investor grievances.
 - b. The past record (for a min period of 3 years before the date of the prospectus) of investor grievance redressal of the company and its listed subsidiaries/associates including details as to the time normally taken by it for disposal of various types of investor grievances.
 - c. That the company undertakes to subject itself to the jurisdiction of Indian Courts having jurisdiction over the place where the stock exchange is situated regarding grievances of the applicants for IDRs

6A.11 RISK FACTORS & MANAGEMENT PERCEPTION, IF ANY

1. Risk factors shall be disclosed as follows:
 - a. Risk factors associated with the company's business
 - b. Risk factors associated with the country of the company proposing to issue IDRs
 - c. Risk factors associated with the IDRs / underlying shares
2. Risk factors shall be classified as those which are specific to the project and internal to the issuer company and those which are external and beyond the control of the issuer company.
3. Risk factors shall be determined on the basis of their materiality.
4. Materiality shall be decided taking the following factors into account:
 - a. events may not be material individually but may be found material collectively.
 - b. Some events may have material impact qualitatively instead of quantitatively.
 - c. Some events may not be material at present but may be having material impacts in future.
5. The Risk factors shall appear in the prospectus in the following manner:
 - a. Risks envisaged by Management.
 - b. Proposals, if any, to address the risks.
 - c. Any 'notes' required to be given prominence shall appear immediately after the Risk factors.

6A.12 RECENT DEVELOPMENTS

Important events in the recent past (2 FY preceding the issue) providing details of important developments on 3 key areas: Operations & Management, Shareholding patterns and Business Environment

6A.13 MARKET PRICE INFORMATION AND OTHER INFORMATION CONCERNING THE SHARES IN THE DOMESTIC MARKET OF THE ISSUER

1. Market price of shares for each quarter of the last three calendar years preceding the calendar year preceding the year of the issue of Prospectus (High, Low, Average Daily Trading Volume)
2. Market price of shares for each month of the calendar year preceding the year of the issue of Prospectus (High, Low, Average Daily Trading Volume)
3. Market price of shares for the month preceding the date of Prospectus (High, Low, Average Daily Trading Volume)
4. The Opening and Closing price on the last day of the preceding month of the date of Prospectus along with the volume
5. This information should be provided, exchange wise, if the securities are listed in more than one exchange
6. This information should be updated as on last available date before the date of prospectus
7. If it is a further issue of IDRs which are already listed in India, the above information should be given about such IDRs also

6A.14 DIVIDENDS

1. Dividend policy of the Company
2. Rate of Dividend and Amount of Dividend paid for the last five financial years
3. Regulatory framework in the Country of Incorporation/share listed concerning Dividends
4. Details of Arrangement with the Depositories for payment of Dividend to the IDR holders
5. Information about changes, if any, in dividends announced and dividends paid and time gap between the dividends announced and dividends paid.
6. Information about Dividend Yield.

7. Taxation aspects of dividend distribution.

6A.15 EXCHANGE RATES

1. Brief history of the pattern of Exchange rates between the Country of Incorporation/where shares are listed and India
2. High, Low, Average Rates for the last five years
3. High, Low, Average Rates for the last twelve months

6A.16 FOREIGN INVESTMENT AND EXCHANGE CONTROLS OF THE COUNTRY OF INCORPORATION/ WHERE SHARES ARE LISTED

Information relating to the relevant foreign investment laws and exchange control regulations of the Country of Incorporation or country where the underlying equity shares are listed.

6A.17 OBJECTS OF THE ISSUE / USE OF PROCEEDS

The following shall be disclosed:

1. purpose of the issue;
2. break-up of the cost of project for which the money is raised through the IDR issue;
3. the means of financing such project; and
4. proposed deployment status of the proceeds at each stage of the project.

6A.18 CAPITALISATION STATEMENT

	Pre-issue as (Figures in Rs.crores)
Short-Term Debt	
Long Term Debt	
Shareholders Funds	
Share Capital	
Reserves	
Total Shareholders Funds	
Long Term Debt/Equity	

6A.19 CAPITAL STRUCTURE

1. Authorised, issued, subscribed and paid up capital (Number of instruments, description, aggregate nominal value).
2. Size of present issue.
3. Paid-up Capital:
 - before the issue;
 - after the issue (if the IDR issue involves issue of fresh equity shares); and
 - share premium account (before and after the issue)
4. Detailed notes to Capital Structure

Capital Structure shall also contain details regarding holdings of major shareholders i.e., the person or persons who are in over-all control of the company.

6A.20 FINANCIAL INFORMATION

1. The audited consolidated or unconsolidated financial statements prepared in accordance with Indian GAAP or IFRS or US GAAP shall contain the following:
 - a. Report of Independent Auditors on the Financial Statements
 - b. Balance Sheets
 - c. Statements of Income
 - d. Schedules to Accounts
 - e. Statements of Changes in Stockholders' Equity
 - f. Statements of Cash Flows
 - g. Statement of Accounting Policies
 - h. Notes to Financial Statements
 - i. Statement Relating to Subsidiary Companies (in case of unconsolidated financial statements)
2. Report of the statutory auditor on the financial results and financial status of the company for each of the five financial years immediately preceding the issue of prospectus including the profits or losses and assets & liabilities of the issuing company at the last date to which the accounts of the company were made in the specified form; provided that the gap between date of issue and date of report shall not be more than 120 days up to a period not being more than 120 days before the opening of the issue, wherever statutory audit is required under the law of the country in which the issuing company is incorporated;
 - a. The above report needs to be stated in Indian Rupees in addition to home country currency and shall be prepared either in Indian GAAP (including all Accounting Standards issued by the Institute of Chartered Accountants of India) or with the International Financial Reporting Standards (IFRS) [including the International Accounting Standards (IAS)] or US GAAP, with a reconciliation statement vis-à-vis Indian GAAP. If the same is prepared according to IFRS or US GAAP, a paragraph on summary of significant differences between Indian GAAP and IFRS or Indian GAAP and US GAAP, as the case may be, shall also be incorporated.
 - b. Further, in case the report is prepared as per IFRS or US GAAP, the annual and quarterly financial results shall be audited by a professional accountant or certified public accountant or equivalent (by whatever name called in the issuer country) in accordance with the International Standards on Auditing (ISA). The auditor's report shall also be prepared in accordance with the ISA.
 - c. The above report needs to be stated on consolidated Basis or stand alone basis
 - d. In case issuer country's accounting norms do not require a statutory Audit, such accounts shall be audited by a professional accountant or a certified public accountant
3. A report by domestic depository, as certified by an Accountant who is member of Institute of Chartered Accountants of India holding certificate of practice, upon profits or losses of the issuing company for each of the five financial years immediately preceding the issue of prospectus and upon the assets and liabilities of the issuing company at the last date to which the accounts of the company were made in the specified form; provided that the gap between date of issue and date of report shall not be more than 120 days
4. If the proceeds of the IDR issue are used for investing in other body (ies) corporate, then following details of such body (ies) corporate shall be given :
 - a) Names and address(es) of the bodies corporate;
 - b) The reports as stated above in respect of those bodies corporate also.
5. Related Party transactions
6. Liquidity and Capital Resources

6A.21 STATEMENT ON MATERIAL DEVELOPMENTS SUBSEQUENT TO THE DATE OF THE LAST FINANCIAL STATEMENTS AS DISCLOSED IN THE PROSPECTUS

An statement by the directors whether in their opinion there have arisen any circumstances since the date of the last financial statements as disclosed in the prospectus any which materially and adversely affect or is likely to affect the trading or profitability of the company, or the value of its assets, or its ability to pay its liabilities within the next twelve months, and if so, an outline of such circumstances and an assessment of their likely impact.

6A.22 MANAGEMENT DISCUSSION AND ANALYSIS OF THE FINANCIAL STATEMENTS (BY COMPARING THE RECENT FINANCIAL YEAR WITH THE PREVIOUS THREE FINANCIAL YEARS)

1. A summary of past financial results after adjustments as given in the auditors report for the past three years containing significant items of income and expenditure shall be given.
2. Overview of the business of the issuer company.
3. Factors that may affect Results of the Operations.
4. An analysis of reasons for the changes in significant items of income and expenditure shall also be given, inter-alia, containing the following:
 - a. unusual or infrequent events or transaction;
 - b. significant economic changes that materially affected or (are likely to effect income from continuing operations;
 - c. known trends or uncertainties that have had or are expected to have a material adverse impact on sales, revenue or income from continuing operations;
 - d. future changes in relationship between costs and revenues, in case of events such as future increase in labour or material costs or prices that will cause a material change are known;
 - e. the extent to which material increases in net sales or revenue are due to increased sales volume, introduction of new products or services or increased sales prices;
 - f. total turnover of each major industry segment in which the company operated
 - g. status of any publicly announced new products or business segment;
 - h. the extent to which business is seasonal;
 - i. any significant dependence on a single or few suppliers or customers;
 - j. competitive conditions.

6A.23 INDUSTRY AND BUSINESS OVERVIEW

Market including details of the competition, past production figures for the industry, existing industry capacity, past trends and future prospects regarding exports (if, applicable), demand and supply forecasts (if given, should be essentially with assumptions unless sourced from a market research agency of repute), etc. to be given. Source of data used shall be mentioned.

6A.24 DETAILS OF THE ISSUER

1. Main object, history and present business of the company;
2. Location of the project, if any;
3. Installed capacity and the details of plant and machinery, infrastructure facilities, technology etc., where applicable;
4. Schedule of implementation of project and progress made so far, if applicable;
5. Nature of product(s), consumer(s), industrial users;
6. Research and Development, Patents and Licenses, etc.
7. Property, Plants and Equipment
8. Particulars of financial and other defaults, if any;

9. Underwriting
10. Experts
11. Where You Can Find Additional Information
12. Enforcement of Civil Liabilities Against Foreign Persons

6A.25 SUBSIDIARIES AND ASSOCIATES OF THE ISSUER

The following information for the last 3 years based on the audited statements in respect of subsidiaries and associates of the Issuing Company:

1. Date of Incorporation;
2. Nature of activities;
3. Equity Capital;
4. Reserves (excluding revaluation reserve);
5. Sales;
6. Profit after tax (PAT);
7. Earnings per share (EPS); and
8. Net Asset Value (NAV);

If the subsidiaries and associates are not required to prepare such audited statements as per the laws prevailing in those countries, the same may be certified as true and correct by the Board of Directors and the management of such companies, provided a certificate from a certified public accountant or equivalent practicing in the concerned country is submitted to SEBI.

6A.26 MANAGEMENT

1. Controlling shareholders and their Background
2. Details of the Board of Directors and the Key Managerial Personnel (i.e. Name, address(es) of Directors, Manager, Managing Director or other principal officers of the company, age, qualification, industry experience, other directorships)
3. Remuneration of the Directors and the Key managerial personnel with detailed breakup, sitting fees, their relation with promoters / controlling shareholder(s), if any, their equity holding in the company, duration of their association with the company.
4. Organisational Structure
5. Board Practices
6. Employees

6A.27 SECURITIES MARKET OF THE COUNTRY OF INCORPORATION/ WHERE SHARES ARE LISTED

1. Brief History
2. Stock Exchange Regulation
3. Listing Regulations
4. Details of the Securities market regulator of the country of the issuer company
5. Whether the Securities market regulator of the country of the issuer company has signed any MoU with SEBI/IOSCO
6. Disclosure under the Companies Act and Securities Regulations (or equivalent thereof)
7. Stock Exchanges
8. Takeover Code/Buyback Code
9. Reforms in Some Key Sectors of the Economy

10. Restriction on Foreign Ownership of Securities
11. Overview of the Financial Sector
12. Nature of the Securities Trading Market in that country
13. A statement of how the enforcement of Indian Securities Laws would be affected by the fact that the issuer is located outside India

6A.28 DESCRIPTION OF THE INDIAN DEPOSITORY RECEIPTS AND RIGHTS OF IDR HOLDERS

1. Brief description of the Indian Depository Receipts
2. Dividends, Other Distributions and Rights of IDR holders
3. Voting rights and their manner of exercise by IDR holders, if any.
4. Record dates and how the same will be disclosed.
5. Reports and other communication to which the IDR holders will be entitled.
6. Conversion procedure of IDRs into shares
7. Governing Law regarding various aspects of IDRs and transactions therein.

6A.29 PROVISIONS REGARDING TRANSFER OF SHARES AND DEPOSITORY RECEIPTS

1. Provisions regarding transfer of IDRs
2. Outline of provisions regarding transfer of underlying shares after conversion

6A.30 INFORMATION RELATING TO THE DEPOSITARY - INDIAN & INTERNATIONAL

Brief details of the Domestic Depository, Overseas Custodian Bank and Depositary Agreement.

6A.31 APPROVALS OF THE GOVERNMENT/REGULATORY AUTHORITIES

Information relating to statutory and regulatory approvals required in home country for the Issue and the related aspects and their status, and approvals from Indian Regulatory authorities.

6A.32 TAXATION FRAMEWORK IN INDIA AND THE COUNTRY OF INCORPORATION / WHERE SHARES ARE LISTED

Information relating to relevant provisions of Taxation law, Tax Treaties and their impact for IDR holders.

6A.33 OUTSTANDING LITIGATIONS AND DEFAULTS

1. Material litigation / liabilities/defaults including arrears / potential liabilities of the issuer, its promoters / controlling shareholders / directors and its subsidiaries and associates.
2. Materiality shall be determined on the basis of factors which are specific to the project and to the issuer, its promoters / controlling shareholders / directors, its subsidiaries and associates, which may have a bearing on the performance of the issuer company.

Materiality shall be decided taking the following factors into account:

- a. Some litigation/defaults may not be material individually but may be found material collectively.
- b. Some litigation/defaults may have material impact qualitatively instead of quantitatively.
- c. Some litigation/defaults may not be material at present but may be having a material impact in future.

6A.34 BASIS OF ISSUE PRICE

1. Earnings per share i.e. EPS pre-issue for the last three years (as adjusted for changes in capital);
2. P/E pre-issue
3. Average return on net worth in the last three years

4. Minimum return on increased net worth required to maintain pre-issue EPS;
5. Net Asset Value per share based on last balance sheet;
6. Net Asset Value per share after issue and comparison thereof with the issue price.
7. Comparison of all the accounting ratios of the issuer company as mentioned above with the industry average and with the accounting ratios of the peer group (i.e companies of comparable size in the same industry.(Indicate the source from which industry average and accounting ratios of the peer group has been taken)
8. The face value of shares (including the statement about the issue price being "X" times of the face value) and that of the IDRs. The aggregate face value of the total equity shares underlying a single IDR also shall be given.

Provided that the projected earnings shall not be used as a justification for the issue price in the prospectus.

Provided further that the accounting ratios disclosed in the prospectus in support of basis of the issue price shall be calculated after giving effect to the consequent increase in capital on account of compulsory conversions outstanding, as well as on the assumption that the options outstanding, if any, to subscribe for additional capital will be exercised.

6A.35 MAIN PROVISIONS OF ARTICLES OF ASSOCIATION / MAIN CHARTER OF THE ISSUER

6A.36 MATERIAL CONTRACTS AND DOCUMENTS FOR INSPECTION

Place at which inspection of the documents specified under Rule 6 of the Companies (Issue of Indian Depository Receipts) Rules, 2004, the prospectus, the financial statements and auditor's report thereof will be allowed during the normal business hours.

6A.37 OTHER INFORMATION

1. Disclosure of mandatory vetting of the prospectus by the legal counsel to the Issuer operating at the place where the registered office of the Issuer is situated.
2. Consent of Merchant Bankers, overseas custodian bank, the domestic depository and all other intermediaries associated with the issue of IDRs.
3. Fees and expenses payable to the intermediaries involved in the issue of IDRs

PART III: APPLICABILITY OF THE PROVISIONS OF THE SEBI (DIP) GUIDELINES, 2000

Except Chapter VI, all other chapters of the SEBI (DIP) Guidelines, 2000 would apply to an issue of Indian Depository Receipts (IDRs) to the extent as may be prescribed by SEBI for such issues.

PART IV: CONTENTS OF ABRIDGED PROSPECTUS (See Rule 8(i) of the IDR Rules)

1. General Instructions: The information to be provided under each of the heads specified below shall be as per the requirement of Part I of Chapter VI except when specified otherwise.
2. The Abridged Prospectus shall be printed in a font size which shall not be visually smaller than TIMES NEW ROMAN Size 10.
3. The order in which items appear in the Abridged Prospectus shall correspond, as far as may be applicable, to the order in which items appear in the Prospectus.
4. The application form shall be so positioned that on the tearing-off of the application form, no part of the information given in the Abridged Prospectus is mutilated.
5. General Information
 - 5.1 The name of the issuer company and address of the registered office of the issuer company, along with telephone number, fax number, e-mail address and website address, and where there has been a change in the address of the registered office or name of the Issuer, details thereof.

- 5.2 Name, address and contact information of the registered office of the company;
- 5.3 Name, address and contact information of the Domestic Depository, the Overseas Custodian Bank with the address of its office in India, the Merchant Banker, the Underwriter to the issue, Advisors to the issue and any other intermediary which may be appointed in connection with the issue of IDRs;
- 5.4 Interest of Experts and Counsel
- 5.5 Name, address and contact information of the compliance officer in relation to the issue of IDRs. The compliance officer should be placed in India
- 5.6 Name, address and contact information of Stock Exchanges where applications are made or proposed to be made for listing of the IDRs;
- 5.7 Disclosure about provisions relating to punishment for fictitious applications;
- 5.8 Statement/declaration for refund of excess subscription
- 5.9 Statement that an interest of 15% p.a. would be paid to the investors if the allotments letters / refund orders are not despatched within 15/30 days of the closure of the public issue, as the case may be
- 5.10 declaration about issue of allotment letters/certificates/ IDRs within the stipulated period;
- 5.11 date of opening of issue;
- 5.12 of closing of issue;
- 5.13 Method and Expected Timetable of the issue
- 5.14 a statement that subscription to the issue shall be kept open for atleast 3 working days and not more than 10 working days
- 5.15 date of earliest closing of the issue;
- 5.16 declaration by the Merchant Banker with regard to adequacy of resources of underwriters to discharge their respective obligations, in case of being required to do so;
- 5.17 a statement by the issuing company that all moneys received out of issue of IDRs shall be transferred to a separate domestic bank account, name and address of the bank and the nature and number of the account to which the amount shall be credited;
- 5.18 details of availability of prospectus and forms, i.e., date, time, place etc;
- 5.19 amount and mode of payment seeking issue of IDRs
- 5.20 Disclosure on Investor Grievances and Redressal System:
- 5.21 the company undertakes to subject itself to the jurisdiction of Indian Courts having jurisdiction over the place where the stock exchange is situated regarding grievances of the applicants for IDRs
6. Structure of the issuer company
Following details to be furnished:
 - 6.1 Authorised, issued, subscribed and paid up capital (Number of instruments, description, aggregate nominal value).
 - 6.2 Size of present issue.
 - 6.3 Paid-up Capital:
 - before the issue;
 - after the issue (if the IDR issue involves issue of fresh equity shares); and
 - share premium account (before and after the issue)
 - 6.4 Detailed notes to Capital Structure

7. Terms of the Present Issue
 - 7.1 Authority for the issue, terms of payment and procedure and time schedule for allotment and issue of certificates/ refund orders.
 - 7.2 The clause "Interest in Case of Delay in Despatch of Allotment Letters/ Refund Orders in Case of Public Issues" shall appear.
8. Instructions for applicants
 - 8.1 How to Apply, Availability of Prospectus, Abridged Prospectus and Application Forms, Mode of Payment and Book building procedure, if relevant.
 - 8.2 In the application form, the declaration relating to Nationality and Residency shall be shown prominently as under:

"Nationality and Residency (Tick whichever is applicable)

 - i. I am / We are Indian National(s) resident in India and I am/we are not applying for the said equity shares as nominee(s) of any person resident outside India or Foreign National(s).
 - ii. I am / We are Indian National(s) resident in India and I am / We are applying for the said equity shares as Power of Attorney holder(s) of Non- Resident Indian(s) mentioned below on non-repatriation basis.
 - iii. I am / We are Indian National(s) resident outside India and I am/we are applying for the said equity shares on my / our own behalf on non-repatriation basis."
 - 8.3 The application form should contain necessary instructions/ provisions for the following:
 - i. Instructions to applicants to mention the number of application form on the reverse of the instruments to avoid misuse of instruments submitted along with the applications for shares/ debentures in public issues.
 - ii. Provision in the application form for inserting particulars relating to bank account number and the name of the bank with whom such account is held, to enable printing of the said details in the refund orders or for refunds through Electronic Clearing System.
 - iii. Disclosure of PAN/GIR number.
 - iv. Details of options, if any, to receive securities subscribed for and a statement that trading in securities on the stock exchanges in physical form will be available only subject to limits prescribed by the Board for time to time.
 - 8.4 Any special tax benefits for company and its shareholders (Only section numbers of the Income Tax Act and their substance should be mentioned, without reproducing the text of the sections)
 - 8.5 Restrictions on investments in IDRs / fungibility of IDRs
9. Particulars of the Issue
 - 9.1 Objects of the issue
 - 9.2 Project cost
 - 9.3 Means of financing
 - 9.4 Name of Appraising Agency, if any
 - 9.5 Name of Monitoring Agency, if any
10. Description of the Indian Depository Receipts and Rights of IDR Holders
 - 10.1 Brief description of the Indian Depository Receipts
 - 10.2 Dividends, Other Distributions and Rights of IDR holders
 - 10.3 Voting rights and their manner of exercise by IDR holders, if any.
 - 10.4 Record dates and how the same will be disclosed.
 - 10.5 Reports and other communication to which the IDR holders will be entitled.

- 10.6 Conversion procedure of IDRs into shares
- 10.7 Governing Law regarding various aspects of IDRs and transactions therein.
11. Company, Management and Project
 - 11.1 History and main objects and present business of the company.
 - 11.2 Promoters / controlling shareholders and their background.
 - 11.3 Names, address and occupation of manager, managing director, and other Directors (including nominee-directors and whole-time directors) giving their directorships in other companies.
 - 11.4 Location of the project
 - 11.5 Plant and machinery, technology, process, etc
 - 11.6 Collaboration, any performance guarantee or assistance in marketing by the collaborators
 - 11.7 Infrastructure facilities for raw materials and utilities like water, electricity, etc.
 - 11.8 Schedule of implementation of the project and progress made so far, giving details of land acquisition, civil works, installation of plant and machinery, trial production, date of commercial production etc
 - 11.9 Nature of the products/services and end users
 - 11.10 Existing, licensed and installed capacity of the product, demand of the product-existing, and estimated in the coming years as estimates by a Government authority or by any other reliable institution, giving source of the information. In case the company is providing services, relevant information with regard to nature/ extent of services, etc., have to be furnished.
 - 11.11 Approach to marketing and proposed marketing set up
 - 11.12 Export possibilities and export obligations, if any.
 - 11.13 Stock Market Data: Disclose particulars of:-
 - a. Market price of shares for each quarter of the last three calendar years preceding the calendar year preceding the year of the issue of Prospectus (High, Low, Average Daily Trading Volume)
 - b. Market price of shares for each month of the calendar year preceding the year of the issue of Prospectus (High, Low, Average Daily Trading Volume)
 - c. Market price of shares for the month preceding the date of Prospectus (High, Low, Average Daily Trading Volume)
 - d. The Opening and Closing price on the last day of the preceding month of the date of Prospectus along with the volume
 - e. This information should be provided, exchange wise, if the securities are listed in more than one exchange
 - f. This information should updated as on last available date before the date of prospectus
 - g. If it is a further issue of IDRs which are already listed in India, the above information should be given about such IDRs also
12. Particulars with regard to the subsidiaries / associates of the issuer

The following information for the last 3 years based on the audited statements in respect of subsidiaries and associates of the Issuing Company:

 - 12.1 Date of Incorporation;
 - 12.2 Nature of activities;
 - 12.3 Equity Capital;
 - 12.4 Reserves (excluding revaluation reserve);
 - 12.5 Sales;

- 12.6 Profit after tax (PAT);
- 12.7 Earnings per share (EPS); and
- 12.8 Net Asset Value (NAV);
- 13. Basis for Issue Price
 - 13.1 Earnings per share i.e. EPS pre-issue for the last three years (as adjusted for changes in capital);
 - 13.2 P/E pre-issue
 - 13.3 Average return on net worth in the last three years
 - 13.4 Minimum return on increased net worth required to maintain pre-issue EPS;
 - 13.5 Net Asset Value per share based on last balance sheet;
 - 13.6 Net Asset Value per share after issue and comparison thereof with the issue price.
 - 13.7 Comparison of all the accounting ratios of the issuer company as mentioned above with the industry average and with the accounting ratios of the peer group (i.e., companies of comparable size in the same industry. (Indicate the source from which industry average and accounting ratios of the peer group has been taken)
- Provided that the projected earnings shall not be used as a justification for the issue price in the prospectus.
- Provided further that the accounting ratios disclosed in the prospectus in support of basis of the issue price shall be calculated after giving effect to the consequent increase in capital on account of compulsory conversions outstanding, as well as on the assumption that the options outstanding, if any, to subscribe for additional capital will be exercised.
- 13.8 The face value of shares (including the statement about the issue price being "X" times of the face value) and that of the IDRs. The aggregate face value of the total equity shares underlying a single IDR also shall be given
- 14. Outstanding Material Litigations and Defaults (in a summarised tabular form)
 - 14.1 Material Litigation / Liabilities including arrears/Potential liabilities of the issuer, its promoters / controlling shareholders / directors and its subsidiaries and associates.
- 15. Material Development: Any material development after the date of the latest balance sheet and its impact on performance and prospects of the company.
- 16. Expert opinion obtained, if any.
- 17. Change, if any, in directors and auditors during the last three years and reasons thereof.
- 18. Time and Place of Inspection of material contracts (List of material contracts not required)
- 19. Financial Performance of the Company for the Last Five Years (Figures to be taken from the audited annual accounts in a tabular form)
 - 19.1 Balance Sheet Data: Equity Capital, Reserves (State Revaluation Reserve, the year of revaluation and its monetary effect on assets) and borrowings
 - 19.2 Profit and Loss data: Sales, Gross profit, Net profit, dividend paid, if any
 - 19.3 Any change in accounting policies during the last three years and their effect on the profits and the reserves of the company
 - 19.4 Following information as extracted from the report of the auditors reproduced in the main prospectus:
 - i) net profit before accounting for extra ordinary items
 - ii) extra ordinary items
 - iii) net profit after accounting for extra ordinary items

20. Management Discussions and Analysis on Accounts
21. Listed Ventures of Promoters / controlling shareholders
22. Disclosure on Investor Grievances & Redressal System
23. Statement regarding minimum subscription clause:

The following statement shall appear:

If the company issuing the IDRs does not receive the minimum subscription of 90% of the issued amount on the date of closure of the issue, or if the subscription level falls below 90% after the closure of issue on account of cheques having being returned unpaid or withdrawal of applications, the company shall forthwith refund the entire subscription amount received. If there is a delay beyond 8 days after the company becomes liable to pay the amount, the company shall pay interest at the rate of 15% per annum for the period of delay.

24. Information relating to relevant provisions of Taxation law, Tax Treaties and their impact for IDR holders.
 25. Brief details of the Domestic Depository, Overseas Custodian Bank and Depository Agreement.
 26. Information relating to statutory and regulatory approvals required in home country for the Issue and the related aspects and their status, and approvals from Indian Regulatory authorities.
 27. Signatories to the Prospectus.
2. SEBI/CFD/DIL/DIP/21/2006/24/4 (April 24, 2006)
 1. In exercise of the powers conferred under sub-section (1) of Section 11 of the Securities and Exchange Board of India Act, 1992, it has been decided to amend the SEBI (DIP) Guidelines, 2000 as under:

CHAPTER V

PRE-ISSUE OBLIGATIONS

1. After clause 5.6A.1, the following clauses shall be inserted:
 "5.6B IPO Grading
 5.6B.1 An unlisted company making an IPO of equity shares or any other security which may be converted into or exchanged with equity shares at a later date may opt to obtain grading for such an IPO from one or more credit rating agencies.
 5.6B.2 Where an issuer opts to obtain IPO grading under clause 5.6B.1, it shall disclose all grades so obtained by it, including unaccepted grades, in the prospectus and abridged prospectus."

CHAPTER VI

CONTENTS OF THE OFFER DOCUMENT

SECTION I - CONTENTS OF THE PROSPECTUS

2. Sub-clause (x-a) shall be inserted after sub-clause (x) of clause 6.4.2.2 as under:
 "(x-a) Statement indicating whether IPO grading has been opted for. If yes, disclosure of all grades so obtained, including unaccepted grades, as provided under clause 5.6B.2 and reference of the page number where details of IPO grading, as provided under clause 6.8.2.9A, are given."
3. Clause 6.8.2.9A shall be inserted after clause 6.8.2.9 as under:
 "6.8.2.9A IPO Grading:
 (a) Name of the credit rating agency from which grading has been obtained for the proposed IPO of equity shares or any other security which may be converted into or exchanged with equity shares at a later date and the grading so obtained, including unaccepted grades.

- (b) If grading has been obtained from more than one credit rating agency, disclosure shall be made of all the grades so obtained, including unaccepted grades.
 - (c) The rationale / description of the grading/s so obtained, as furnished by the credit rating agency/ies.”
- 4. Sub-clause (c) shall be reinserted after sub-clause (b) of clause 6.13.2.14 as under:
“(c) Bidders’ bank account details.”
- 5. Clause 6.17.3A shall be inserted after clause 6.17.3 as under:
“6.17.3A Statement indicating whether IPO grading has been opted for. If yes, disclosure of all grades so obtained, including unaccepted grades, as provided under clause 5.6B.2 and the rationale / description of the grading/s so obtained, as furnished by the credit rating agency/ies, may be given.”
- II. The amendments made vide this circular shall come into force with immediate effect.
- III. This circular is available on SEBI website at www.sebi.gov.in under the category “Legal Framework”. The entire text of the SEBI (DIP) Guidelines, 2000, including the amendments issued vide this circular, is available on SEBI website under the categories “Legal Framework” and “Issues and Listing”.