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Foreign firms may find it hard to issue shares to IDR holders

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Foreign companies may find it difficult to issue shares to Indian Depository Receipt (IDR) holders in the event of rights or bonus issue due to procedural hurdles like filing a fresh prospectus and lack of specific guidelines, experts say.

As per the Indian Companies Act, a company incorporated outside India cannot issue, circulate or distribute any offer of securities to more than 49 persons (other than professional investors) residing in India without registering a prospectus with the Registrar of Companies (RoC).

"A rights or bonus issue for IDR holders may amount to a fresh issue of IDR, which may involve a process as tedious as the original process," said Neerav Merchant, associate partner at law firm Majmudar & Co. Standard Chartered, which became the first company to file for an IDR issue last month, has also highlighted this problem in its draft red herring prospectus (DRHP). According to the UK-based bank, the exact law and the process to be followed for registering with the RoC in the event of further issuance of shares is not clear at present. "However, it is anticipated that the process of registration would be burdensome. If the company decides not to obtain such registration, IDR holders may be either prevented or restricted in participating in a rights issue or other securities offerings of the company," Standard Chartered has mentioned in its DRHP.

Non-fungibility of IDRs is another roadblock for its holders to get shares in the event of rights or bonus issue. "This can lead to difficulties with conversion of rights shares to IDRs and vice-versa," Merchant said. "There is also the problem of fragmented IDRs, which means they may not represent whole shares but parts thereof. In such a scenario, cash dividend or bonus will be easier," he said.

"There is some ambiguity pertaining to possibility of IDR holders being permitted to participate in rights or bonus issue," said Vyapak Desai, head of the capital markets group at Nishith Desai Associates. But Sandeep Parekh, visiting associate faculty at IIM (Ahmedabad) and former executive director of Sebi, says, "I don't think there is any uncertainty with regard to a prospectus issue where offer is made to over 49 persons. In case of IDRs, if any specific disclosure or regulation is not relevant, they (companies) can seek Sebi exemption," he said.

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