

THE SECURITIES ACT
REGULATIONS
(under section 76)

THE SECURITIES (CENTRAL SECURITIES DEPOSITORY) REGULATIONS,
1999

*(Made by the Securities Commission and approved by the Minister on
the 20th day of July, 1999)*

L. N. 111A/99

1. These Regulations may be cited as the Securities (Central Securities Depository) Regulations, 1999. Short Title

2.—(1) In these Regulations— Interpretation.

"handle", with its grammatical variations and cognate expressions, means, in relation to a security entered in the records of a licensed central securities depository, the transfer of such security, the pledging of such security or the withdrawal thereof from the central securities depository system;

"principal account" means an account maintained in the name of a principal account holder in accordance with the rules of a securities depository;

"principal account holder" means a person who maintains an account with a licensed central securities depository;

"licensed central securities depository" or "securities depository" means a company licensed under section 67B of the Act to operate a central securities depository;

"subsidiary account" means an account maintained and operated by a principal account holder in the name of the subsidiary account holder as part of a principal account;

"subsidiary account holder" means the person in whose name a subsidiary account is opened and maintained by the principal account holder.

3.—(1) Where a licence is granted to a company under section 67B of the Act to establish a central securities depository— Operation of securities depository.

(a) a principal account holder may, in accordance with the rules governing the operation of the securities depository (in these Regulations referred to as the relevant rules), open and maintain with that securities depository—

(i) a principal account in relation to eligible securities, in which shall be recorded the rights exercisable by that principal account holder in relation to those securities; and

- (ii) a subsidiary account in which shall be recorded the beneficial ownership of the eligible securities listed in that account;
- (b) an issuer's eligible securities may be allotted or transferred to the securities depository by or with the authority of a principal account holder or subsidiary account holder, as the case may be;
- (c) upon such allotment or transfer, as the case may be, appropriate entries shall be made in accordance with the relevant rules in—
 - (i) the records of the securities depository;
 - (ii) the relevant principal account or subsidiary account authorizing the principal account holder to handle those securities.

(2) Subject to the provisions of these Regulations, a securities depository may be operated by the licensee for the purpose of—

- (a) holding eligible securities as a nominee for a principal account holder;
- (b) facilitating the transfer of such securities; or
- (c) holding eligible securities on its own account as the beneficial owner thereof.

(3) The title to any eligible securities entered in a principal account or subsidiary account, as the case may be, shall vest in the relevant principal account holder or subsidiary account holder.

4.—(1) Where a licensed central securities depository or its subsidiary is listed in the register of members of an issuer—

- (a) that securities depository or subsidiary, as the case may be, shall, unless it holds eligible securities on its own account as the beneficial owner thereof, be deemed not to be a member of the issuer;
- (b) the persons named as principal account holders or subsidiary account holders, as the case may be, shall, during any period in respect of which eligible securities carrying voting rights are entered against their names in the register of the securities depository—
 - (i) be deemed to be members of that issuer in respect of those securities; and
 - (ii) except as otherwise provided in these Regulations, be entitled to all the rights, powers and privileges and be subject to all the liabilities, duties and obligations of a member as are conferred by the Companies Act or the constitution of the issuer.

Central securities depository deemed not to be member of issuer.

(2) Where a licensed central securities depository or its subsidiary is listed in the register of debenture holders of an issuer as the owner of an issuer's securities which do not carry voting rights—

- (a) that securities depository or its subsidiary shall, unless it holds eligible securities on its own account as the beneficial owner thereof, be deemed not to be the owner of such securities;
- (b) the persons named as principal account holders or subsidiary account holders, as the case may be, shall during any period in respect of which such securities are entered against their names in the register of the central securities depository—
 - (i) be deemed to be the owners of those securities; and
 - (ii) except as otherwise provided in these Regulations, be entitled to such rights, powers and privileges and be subject to such liabilities, duties and obligations, of the owner of such securities as are conferred by the Companies Act or any instrument creating such securities.

(3) An issuer shall not be obliged to enter in its register of members, the names of persons who are deemed to be members of the issuer by virtue of paragraph (1) (b) or (2) (b).

(4) Notwithstanding anything to the contrary in these Regulations, a principal account holder or subsidiary account holder, as the case may be, who, as at the record date of an issuer, is named in the register of the securities depository as—

- (a) the owner of securities carrying voting rights in the issuer, shall be regarded as a member of that issuer for the purpose of attending and exercising all rights at a general meeting of members of that issuer;
- (b) the owner of non-equity securities of the issuer, shall be regarded as the owner of those securities for the purpose of attending and exercising all rights at a general meeting of owners of such securities.

(5) Where—

- (a) a securities depository or its subsidiary is listed in the register of an issuer in relation to securities of that issuer; and
- (b) by virtue of any provision of this regulation, that securities depository or its subsidiary is deemed not to be the owner of those securities or not to be a member of that issuer,

those securities shall not be liable to be attached or taken in execution under an order of a court in respect of any debt or other liability of that securities depository.

(6) In paragraph (4) “record date of an issuer” means the date on which the names of members must be entered in the register of the issuer in order to receive dividends and other distributions or to exercise voting rights.

Manner of
effecting transfers

5.—(1) Subject to the provisions of these Regulations, a transfer of securities which are entered in the records of a securities depository from a principal or subsidiary account to another principal or subsidiary account shall be effected in accordance with the procedures specified in the relevant rules.

(2) A transfer which is effected in accordance with paragraph (1) shall be a valid and effective transfer of title to the securities so transferred.

Effect of transfer.

6.—(1) Where a transfer of securities is effected pursuant to regulation 5—

- (a) the transferee shall be deemed to have agreed, at the time of such transfer, to accept the transfer subject to the terms and conditions on which the securities in question were held by the transferor immediately before the time of such transfer; and
- (b) where applicable, the transferee shall be deemed to have agreed at the time of the transfer to become a member of the issuer and to be bound by the constitution of the issuer or the terms and conditions of any instrument creating the securities.

Protection from
suit, etc

7.—(1) No action, suit or other proceeding shall be brought or instituted against a licensed central securities depository in respect of any act done in good faith and without negligence by that depository while carrying out the instructions of a principal account holder in relation to any securities entered in the register of that depository.

(2) A licensed central securities depository shall not be obliged to ascertain whether or not—

- (a) a principal account holder has a right to handle any securities entered in the principal or subsidiary account maintained by that principal account holder;
- (b) the document of title to a security deposited with an issuer for the purpose of registering the transfer of that security in the name of the securities depository is genuine.

(3) Except as otherwise provided in these Regulations, a licensed central securities depository shall not be under any fiduciary duty or any obligation to a subsidiary account holder in whose name a subsidiary account is maintained in that depository.

(4) Without prejudice to the provisions of any other law for the time being in force, a licensed central securities depository shall be liable to compensate a principal account holder or subsidiary account holder for any loss caused to that account holder which is attributable to the negligent or wrongful act or omission of that depository or any of its employees.

8.—(1) A licensed central securities depository shall, on request by an issuer, furnish to the issuer, for the purposes specified in paragraph (2)—

Central Securities
depository to
supply information.

- (a) a list of the names and such other particulars as the issuer may specify, of the principal account holders and subsidiary account holders entered in the register of that central securities depository as the beneficial owners of securities of the issuer; and
- (b) particulars of those securities.

(2) The purposes referred to in paragraph (1) are—

- (a) the sending of—
 - (i) notices of general meetings of members or the holders of any securities of an issuer;
 - (ii) any other notices or documents required to be sent to such members or holders of securities;
- (b) the despatching of dividends, warrants or any other payments or benefits payable by an issuer;
- (c) the making of formal offers for subscription for securities of an issuer.

(3) The information furnished pursuant to paragraph (1) shall be taken from the records of the securities depository as at the record date as defined in regulation 4 (6).

(4) Where an issuer—

- (a) pays any amount by way of dividend or otherwise; or
- (b) issues an offer for subscription in respect of any securities,

to any principal account holder or subsidiary account holder on the basis of any incorrect information supplied by the central securities depository, that issuer shall be discharged from any liability to those account holders in respect of that payment or issue.

(5) Where a principal account holder or subsidiary account holder, as the case may be, is deemed to be a member or holder of any securities, of an issuer, all notices and other documents which the issuer is required to send to such member or holder shall be sent on the basis of the information furnished to the issuer under paragraph (1).

9.—(1) Where any eligible securities are pledged to an eligible pledgee in order to secure the payment of a debt or the performance of any obligation by an account holder (in this regulation referred to as the pledgor), the securities depository in whose register those securities are entered shall, upon being notified of the existence of the pledge take such action as is necessary to block the account in question or a portion thereof.

Blocked accounts.

(2) Where an account is blocked in accordance with paragraph (1), the securities depository shall—

- (a) subject to paragraph (c), cease to handle the relevant securities on the instructions of a principal account holder, or, where the pledgor is a subsidiary account holder, on the instructions of the principal account holder and the pledgor;
- (b) notify the eligible pledgee in writing of such cessation in accordance with the relevant rules; and
- (c) handle those securities only on the instructions of the eligible pledgee.

(3) Where an eligible pledgee notifies the securities depository that—

- (a) the eligible pledgee is entitled to call for the transfer of the relevant securities, the securities depository shall on the instructions specified in the notice and in accordance with the relevant rules, transfer the relevant securities to the pledgee if satisfied as to the payment of any stamp duty and transfer tax applicable to the transfer of those securities;
- (b) the right of the eligible pledgee to exercise control of the relevant securities has expired, the securities depository shall take such action as is necessary to unblock the account in question.

(4) In this section “eligible pledge” has the meaning assigned to that expression in the relevant rules.

Erroneous entries.

10.—(1) Where a transfer of any securities entered in the register of a securities depository is effected as a result of an error on the part of that depository—

- (a) the transfer shall be valid notwithstanding that error;
- (b) the securities depository shall pay compensation to any person who sustains loss or incurs any expense as a result of that transfer.

(2) Where an incorrect entry (other than a transfer referred to in paragraph (1)), is made in the register of a securities depository or there is delay in making an entry in that register, any person who suffers any loss or incurs any expense as a result of such incorrect entry or delay may in writing require the securities depository to rectify the error or to pay compensation in respect of that loss or expense, or for both rectification and payment of compensation.

(3) Where a securities depository fails to comply with a requirement made under paragraph (2) to rectify an error in the register or to pay compensation, the person concerned in writing may request the Commission to direct the securities depository to rectify the register or to pay compensation, or both.

(4) Before taking action under paragraph (3), the Commission shall afford the securities depository an opportunity to be heard on the matter.

(5) Any person aggrieved by the action of the Commission under paragraph (3) may appeal to a Judge in Chambers, who may make such order as he thinks fit.

11.—(1) A securities depository shall, upon a request in writing by a principal account holder or subsidiary account holder of securities entered in the register of that securities depository, make available at its office for inspection by that account holder, a list of—

Inspection of
entries

(a) the names and addresses of the principal account holders and subsidiary account holders recorded in the register of that securities depository as being the beneficial owners of those securities; and

(b) the amount of such securities.

(2) For the purposes of this regulation, a securities depository may, with the approval of the Commission, make arrangements as specified in paragraph (3) with an issuer whose securities are entered in the register of that depository.

(3) The arrangements referred to in paragraph (2) are that a list of the securities mentioned in that paragraph are made available at the registered office of the issuer or at any other place where that issuer is permitted by law to keep a register of those securities, for inspection and copying of any portion thereof upon payment of such fee as may be agreed between the securities depository and the issuer.

(4) For the purposes of paragraphs (1) and (2), the lists shall be comprised from entries in the register of the securities depository as of a date not earlier than sixty days prior to the date of inspection or such other date as the Commission may specify by notice in writing to that depository.

12.—(1) Every officer and employee of a licensed central securities depository—

Secrecy.

(a) shall regard as secret and confidential all matters relating to accounts established and maintained by that securities depository;

(b) shall not disclose any information regarding such accounts to any person other than a person to whom he is authorized by the securities depository to disclose it for the purposes of the due administration of these Regulations.

(2) A person who contravenes paragraph (1) shall be guilty of an offence and liable on summary conviction before a Resident Magistrate to a fine not exceeding twenty thousand dollars or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

Unlawful interference with computer system.

13.—(1) A person commits an offence if—

- (a) being an authorized person, he gains or attempts to gain unauthorized access to the computer system of central securities depository, whether by means of any device or apparatus forming part of that computer system or by any other means;
- (b) not being an authorized person, he gains or attempts to gain access to the computer system of a central securities depository, by any means referred to in sub-paragraph (a);
- (c) he unlawfully interferes with, impedes or attempts to interfere with or impede, the operation of a computer system of a central securities depository.

(2) A person who is convicted of an offence under paragraph (1) is liable to a fine not exceeding twenty thousand dollars or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

(3) In paragraph (1)—

“authorized person” means a person authorized by a central securities depository to gain access to its computer system, within such limits and for such purposes as may be specified in the authorization;

“unauthorized access” means access which is—

- (a) beyond the limits specified by a central securities depository; and
- (b) for purposes other than those so specified.