

[MODULE 4] The Depositories Act, 1996

Meaning

- A depository is an organisation where the securities of a shareholder are held in the electronic form at the request of the shareholder through the medium of a depository participant.
- A depository is like a bank for securities. If an investor wishes to avail the services offered by a depository, he/she has to open an account with the depository, through a depository participant. This is very similar to opening of an account with any of the branches of a bank so as to utilise the services of that bank. The depository can legally transfer the beneficial ownership of securities.

Benefits

The benefits of participation in a depository are :

- Immediate transfer of securities.
- No stamp duty on transfer of securities.
- Elimination of risks associated with physical certificates such as bad delivery, fake securities etc.
- Reduction in paperwork involved in transfer of securities.
- Reduction in transaction cost.
- Nomination facility.
- Change in address recorded with DP gets registered electronically with all companies in which investor holds securities eliminating the need to correspond with each of them separately.
- Transmission of securities is done by DP eliminating correspondence with companies.
- Convenient method of consolidation of folios/accounts.
- Holding investments in equity, debt instruments and Government securities in a single account.
- Automatic credit into Demat account, of shares, arising out of split/consolidation/merger etc.

Models

The two models of the depository system are:

- Dematerialisation, wherein, by operation, there is no physical scrip in existence as neither the individual who owns the shares nor the depository keeps scrips. The depository maintains the electronic ledger of the securities under his control.
- Immobilisation, wherein the physical scrips are held in the depository vaults, supporting the book entry records kept on the computer.

Functions of Depository Participants

- To open accounts of investors.
- Dematerialisation/Demat of securities. The Demat process is converting the physical certificates of investors into an equivalent number of securities in electronic form.
- Rematerialisation/Remat of securities. The Remat process is converting securities held in electronic form in the Demat account back to the form of the physical certificates.
- Transfer of securities, i.e. changing the beneficial ownership of securities.

- Settlement of trades which are done on the exchange connected to the depository.
- Pledging and Unpledging of securities for a loan against shares.
- Corporate action benefits such as directly transferring securities to the Demat and bank account of customers.

Objectives of the Depository Act, 1996

- It removes the occurrences of forgery, duplicate share certificates, and bad deliveries.
- This can increase the liquidity of securities by making a way for easy transfer.
- Also, it can avoid the delay caused in the transfer of securities.
- Furthermore, it reduces the cost of a transaction for the investors.
- It enables withdrawal and surrender from the securities with great ease.
- It also maintains a perfect record of the holdings for an investor. This is because all the details are stored in electronic form.
- This also provides infrastructure for services in capital markets.
- By complying to global standards, it does attract foreign investors.

Eligibility Condition for Depository Services

- DP shall have net worth of Rs. 50 crore or more;
- DP shall be either a clearing bank or clearing member of any of the clearing corporations;
- DP shall have appropriate arrangements for receipt and remittance of money with a designated Authorised Dealer (AD) Category - I bank.

Fungibility

- Fungibility is the ability of a good or asset to be interchanged with other individual goods or assets of the same type. Fungible assets simplify the exchange and trade processes, as fungibility implies equal value between the assets.
- Fungibility is the ability of a good or asset to be readily interchanged for another of like kind.
- Like goods and assets that are not interchangeable, such as owned cars and houses, are non-fungible.
- Money is a prime example of something fungible, where a \$1 bill is easily convertible into four quarters or ten dimes, etc.

Power of depositories to make bye-laws

- A depository shall, with the previous approval of the Board, make bye-laws consistent with the provisions of this Act and the regulations.
- In particular, and without prejudice to the generality of the foregoing power, such bye-laws shall provide for-
 - the eligibility criteria for admission and removal of securities in the depository;
 - the conditions subject to which the securities shall be dealt with;
 - the eligibility criteria for admission of any person as a participant;
 - the manner and procedure for dematerialisation of securities;
 - the procedure for transactions within the depository;
 - the manner in which securities shall be dealt with or withdrawn from a depository;

- the procedure for ensuring safeguards to protect the interests of participants and beneficial owners;
 - the conditions of admission into and withdrawal from a participant by a beneficial owner;
 - the procedure for conveying information to the participants and beneficial owners on dividend declaration, shareholder meetings and other matters of interest to the beneficial owners;
 - the manner of distribution of dividends, interest and monetary benefits received from the company among beneficial owners;
 - the manner of creating pledge or hypothecation in respect of securities held with a depository;
 - inter se rights and obligations among the depository, issuer, participants and beneficial owners;
 - the manner and the periodicity of furnishing information to the Board, issuer and other persons;
 - the procedure for resolving disputes involving depository, issuer, company or a beneficial owner;
 - the procedure for proceeding against the participant committing breach of the regulations and provisions for suspension and expulsion of participants from the depository and cancellation of agreements entered with the depository;
 - the internal control standards including procedure for auditing, reviewing and monitoring.
- Where the Board considers it expedient so to do, it may, by order in writing, direct a depository to make any bye-laws or to amend or revoke any bye-laws already made within such period as it may specify in this behalf.
 - If the depository fails or neglects to comply with such order within the specified period, the Board may make the bye-laws or amend or revoke the bye-laws made either in the form specified in the order or with such modifications thereof as the Board thinks fit.

Governance of Depository

Meaning of "Depository"

As per the Act, the term "depository" means "a company formed and registered under the Companies Act, 1956 and which has been granted a certificate of registration under sub-section (1A) of Section 12 of the Securities and Exchange Board of India Act, 1992."

This act was enacted to provide for regulation of depositories in securities and for matters connected therewith or incidental thereto.

Certificate of Commencement of Business

No depository shall act as a depository unless it obtains a certificate of commencement of business from the Board (the SEBI). The board shall grant a certificate only if it is satisfied that the depository has adequate systems and safeguards to prevent manipulation of records and transactions. However, a certificate shall not be refused unless the depository concerned has been given a reasonable opportunity of being heard.

Beneficial Owner

- A depository shall enter into an agreement with one or more participants as its agent, in such form as may be specified by the bye-laws. Any person, through a participant, may enter into an agreement, in such form as may be specified by the bye-laws, with any depository for availing its services.
- Any such person shall surrender the certificate or security, for which he seeks to avail the services of a depository, to the issuer in such manner as may be specified by the regulations. The issuer, on receipt of certificate of security, shall cancel the certificate of security and substitute in its records the name of the depository as a registered owner in respect of that security and inform the depository accordingly. A depository shall, on receipt of information, enter the name of the person referred in its records, as the beneficial owner.
- A depository shall be deemed to be the registered owner for the purpose of effecting transfer of ownership of security on behalf of a beneficial owner. However, it shall not have any voting rights or any other rights in respect of securities held by it. The beneficial owner shall be entitled to all the rights and benefits and be subjected to all the liabilities in respect of his securities held by a depository.

BSDA and Single Registration for Depository Participants

Facility for a Basic Services Demat Account (BSDA)

- The SEBI Board had taken decisions to extend the reach of IPOs for the benefit of retail investors. With a view to achieve wider financial inclusion, encourage holding of demat accounts and to reduce the cost of maintaining securities in demat accounts for retail individual investors, it has been decided that all depository participants (DPs) shall make available a "Basic Services Demat Account" (BSDA) with limited services as per terms specified herein.
- **Eligibility:** Individuals shall be eligible to opt for BSDA subject to the following conditions:
 - All the individuals who have or purpose to have only one demat account where they are the sole or first holder.
 - The individual shall have only one BSDA in his /her name across all depositories.
 - Value of securities held in the demat account shall not exceed Rupees Two lakhs at any point of time.
- **Option to Open BSDA:** To DP shall give option:
 - To open BSDA to all eligible individuals who open a demat account after the date of applicability of this circular;
 - To all the existing eligible individuals to convert their demat account into BSDA on the date of the next billing cycle based on value of holding of securities in the account as on the last day of previous billing cycle.
- **Charges:**
 - The charge structure may be on a slab basis as indicated below:
 - i. No Annual Maintenance Charges (AMC) shall be levied, if the value of holding is upto 7 50,000.
 - ii. For the value of holding from & 50,001 to 72,00,000, AMC not exceeding & 100 may be charged.

- The value of holding shall be determined by the DPs on the basis of the daily closing price or NAV of the securities or units of mutual funds, as the case may be. Where such price is not available the last traded price may be taken into account and for unlisted securities other than units of mutual funds, face value may be taken into account.
- The DPs shall reassess the eligibility of the BOs at the end of every billing cycle and give option to the BOs who are eligible to opt for BSDA.

• **Services for Basic Services Demat Accounts:**

- Transaction statements:
 - i. Transaction statements shall be sent to the BO at the end of each quarter. If there are no transactions in any quarter, no transaction statement may be sent for that quarter,
 - ii. If there are no transactions and no security balance in an account, then no further transaction statement needs to be provided.
 - iii. Transaction statement shall be required to be provided tot the quarter in which the account became a zero balance account.
- Holding Statement:
 - i. One annual physical statement of holding shall be sent to the stated address of the BO in respect of accounts with no transaction and nil balance.
 - ii. One annual statement of holding shall be sent in respect of remaining accounts in physical or electronic form as opted for by the BO.
- Charges for Statements : Electronic statements shall be provided free of cost. In case of physical statements, the DP shall provide at least two statements free of cost during the billing cycle. Additional physical statement may be charged at a fee not exceeding & 25 per statement.

• **Rationalisation of Services with respect to Regular Accounts:** In partial modification of the earlier directions, the following rationalisation measures shall be available for regular demat accounts:

- **Accounts with zero balance and nil transactions during the year:** The DPs shall send one physical statement of holding annually to such BOs and shall resume sending the transaction statement as and when there is a transaction in the account.
- **Accounts which become zero balance during the year:** For such accounts, no transaction statement may be sent for the duration when the balance remains nil. However, an annual statement of holding shall be sent to the BO.
- **Accounts with credit balance:** For accounts with credit balance but no transactions during the year, one statement of holding for the year shall be sent to the BO.

- The circular shall be applicable with effect from October 01, 2012.

- The depositories are advised to:
 - make amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision immediately, as may be applicable/ necessary;
 - bring the provisions of this circular to the notice of their DPs and also to disseminate the same on their website; and
 - communicate to SEBI, the status of implementation of the provisions of this circular in the Monthly Development Report.

- This circular is being issued in exercise of the powers conferred by Section 11(1) of Securities, and Exchange Board of India Act, 1992 and section 19 of the Depositories Act, 1996 to protect the interest of investors in securities and to promote the development of, and to regulate, the securities market.
- With a view to achieve wider financial inclusion, encourage holding of demat accounts and to reduce the cost of maintaining securities in demat accounts for retail individual investors, it has been decided that all depository participants (DPs) shall make available a "Basic Services Demat Account (BSDA)".

National Securities Depository Ltd. (NSDL)

National Securities Depository Limited (NSDL) is an Indian Central Securities Depository based in Mumbai. It was established in 1996.

Promoters/Shareholders

NSDL is promoted by Industrial Development Bank of India Ltd. (IDBI), Unit Trust of India, National Stock Exchange of India Ltd., Axis Bank, State Bank of India, etc.

As on 30th September, 2018, number of certificates eliminated (approx.) in crore 3167 number of companies in which more than 75% shares are dematted 8977 average no. of accounts opened per day. Since 1996 November, 3682 presence of demat account holders in the country 99.29% of all pin codes in the country.

NSDL performs a wide range of securities related functions through the DPS:

- Maintenance of individual investors' beneficial holdings in electronic form
- Dematerialisation and rematerialisation of securities.
- Account transfer for settlement of trade in electronic shares.
- Allotments in the electronic form in case of initial public offerings.
- Distribution of non-cash corporate actions.
- Facility for freezing/ locking of investor accounts.
- Facility for pledge and hypothecation of securities.

Central Depository Services (India) Ltd. (CDSL)

CDSL is the second Indian Central Securities depository based in Mumbai. Its main function is the holding securities either in certificated or uncertificated (de-materialised) form, to enable book entry transfer of securities. NSDI main'y works for National Stock Exchange (NSE) where as CDSL mainly works for Bombay Stock Exchange (BSE).
