

SECURITIES AND EXCHANGE COMMISSION

Dated 24th May 1999

No. SEC/ Section-7/ CDS / 99-145- In exercise of the power conferred by section 24 of the Depositories Act, 1999 (VI Of 1999), The Securities and Exchange Commission publishes the following Authentic English Text of the Depositories Act, 1999:-

“An Act to provide for regulation of depositories”

Whereas it is expedient to provide for regulating depositories established for the purpose of maintenance of securities and effecting and recording transfer thereof;

It is hereby enacted as follows:-

1. **Short title and commencement** –(1) This Act may be called the Depositories Act, 1999.
(2) It shall come into force on such date as the Government may, by notification in the official Gazette, appoint.
2. **Definitions** – In this Act, unless there is anything repugnant in the subject or context,-
 - (a) “participant” means a person entitled to participate in a depository in accordance with the regulations;
 - (b) “issuer” means an issuer as defined in section 2 (g) of the Securities and Exchange Ordinance, 1969 (XVII of 1969);
 - (c) “bye-laws” means bye-laws made by a depository under this Act;
 - (d) “Commission” means the Commission as define in section 2 (1) (a) of the Securities and Exchange Commission Act,1993 (XV of 1993);
 - (e) “Companies Act” means the Companies Act, 1994 (XVIII of 1994);
 - (f) “company register” means the register of members as mentioned in section 34 of the Companies Act;
 - (g) “depository” means a company constituted with the institutions specified by regulations for the purpose of maintenance and transfer of securities through book entry and registered under the Companies Act;
 - (h) “ depository register” means the legal ownership register maintained by a depository relating to securities recorded in the name of the depository in the depository part of the company register;
 - (i) “direct account holder” means a person who opens and maintains an account with the depository but is not a participant;

- (j) “regulations” means regulations made under this Act;
 - (k) “book entry” means recording of securities in the depository register in accordance with the regulations;
 - (l) “person” includes any company, institution or organization;
 - (m) “eligible securities” means securities eligible for recording in the depository register under the bye –laws ;
 - (n) “securities” means securities as defined in section 2(1) of the Securities and Exchange Ordinance, 1969 (XVII of 1969);
 - (o) “account” means an account relating to legal ownership of securities recorded in the depository register;
 - (p) “ account holder” means a person who opens and maintains an account with the depository either himself or through any participant.
3. **Act to override other laws** – The provisions of this Act shall have effect notwithstanding anything contained in any other law for the time being in force and shall be in addition to any other law relating to holding and transfer of securities.
4. **Registration-** (1) A depository shall not be entitled to carry on any activities under this Act unless it is registered by the Commission.
- (2) An application for registration under sub-section (1) shall be submitted in the form and manner and on payment of fees and fulfillment of other conditions, if any, prescribed by regulations, and the Commission may call for from the applicant any other related information necessary for the convenience of consideration of the application, and the applicant shall furnish the same.
- (3) The Commission may, by mentioning reasons in writing, reject an application for registration:
- Provided that no application shall be rejected under this sub–section without giving a reasonable opportunity of being heard.
5. **Introduction of depository system** – (1) Every depository shall introduce and administer its own depository system in which or, as the case may be, by which-
- (a) account may be opened and maintained by the participant and the direct account holder and the ownership of securities deposited in the depository part of the company register may be recorded;
 - (b) ownership of securities may be transferred from one account to another account;

- (c) facilities may be given for pledging and lending and borrowing of securities maintained in the account;
 - (d) other facilities prescribed by regulations may be given.
- (2) All provisions under sub-section (1) shall be made in accordance with the conditions and method prescribed by regulations.
6. **Maintenance of securities in dematerialized condition, etc**-All securities deposited in the depository part of the company register shall be kept in dematerialized condition and fungible form.
7. **Application of section 158 of the Companies Act**- In the case of securities deposited with the depository, section 158 of the Companies Act shall not apply.
8. **Effectiveness of transfer of securities through book entry system**-When any security is transferred through the book entry system, the said transfer shall be effective subject to its entry in the depository register in accordance with the regulations.
9. **Securities to be maintained in the depository register**- (1)Subject to the fulfillment of the conditions prescribed by bye-laws, the following securities shall be recorded in the depository register, namely:-
- (a) eligible securities allotted to the clients;
 - (b) all additional securities allotted to account holders;
- (2) The issuer shall, after recording in the depository part of the company register the name of the depository relating to the securities allotted to him, inform the depository about the facts relevant to the said securities in the manner prescribed by regulations, and the depository shall, after being so informed, record the name of the concerned allottee in the depository register.
10. **Transfer of securities**- (1) Subject to the provisions of bye-laws, the transfer of every eligible security shall be in the account of the depository.
- (2) If any person intends to transfer any security from the certificated part of the company register to its depository part, he shall submit to the issuer, in the manner prescribed by regulations, the certificate relating to the security.
 - (3) Upon receipt of the certificate under sub-section (2) the issuer shall cancel it and substitute the name of the depository in respect of the said security in the depository part of the company register and inform the depository in the manner prescribed by regulations, about the substitution.
 - (4) The depository shall after being informed under sub- section (3) deposit the security in the account maintained by the concerned account holder in the depository register

11. Duties, etc. of depositories participants, issuers and account holders-

- (1) On receipt of an instruction from a participant or direct account holder, the depository shall be entitled to effect the transfer of an ownership by making up-to-date the depository register in accordance with the regulations.
- (2) The depository shall not be a member of any issuer.
- (3) The depository shall in the manner prescribed by regulations, furnish information to the issuer relation to the person holding lawful ownership recorded in the depository register and the said person shall be a member of the issuer.
- (4) The issuer shall in respect of a member of any company, rely upon the information furnished by the depository under sub-section (3).
- (5) Notwithstanding anything contained in the Companies Act, the issuer shall open and maintain a separate part in its company register in respect of the securities deposited in the depository.
- (6) Save as provided by regulations, if a depository or any of its directors, officers or employess or any other person has come to know by any means about any document or fact relating to any account holder, he shall not communicate divulge or otherwise disclose to any other person the said document or fact.
- (7) A participant may, on the authority given in writing by his client, record securities in an omnibus account without opening a separate account in the name of the said client in the depository.
- (8) Notwithstanding anything contained in the memorandum or articles of association of the company, a beneficiary owner may be appointed to act as a proxy on behalf of an account holder.
- (9) A participant, without any instruction or authority given in writing by the client, shall not transact any security the ownership of which has been received by the client as a beneficiary or controller nor shall he give authority or permission to any other person to transact any such security.
- (10) The depository shall, in the manner and within the time prescribed by regulations furnish to the participant information relating to the transaction of securities recorded in the depository register.
- (11) Notwithstanding anything contained in this Act, the fees payable by a client for the services provided by the depository in respect of transaction of securities shall be prescribed by regulations.

- 12. Indemnity** – (1) If any act is done by the depository or by any of its employees or representative in good faith and without any negligence, it or the said employee or representative shall not be responsible for any loss or damage caused to the account holder.

(2) If any account holder suffers any loss due to the negligence, wrong act or defect of a depository or any of its employees or representatives, the said depository and its concerned employee and representative shall be bound jointly and severally to pay compensation for the loss of the account holder.

13. **Enquiry-** (1) The Commission may suo moto or receipt of any complaint at any time by order in writing cause an enquiry into any of the following matter to be made by any person appointed in this behalf, namely-

(a) any matter relating to a depository;

(b) any matter relating to an issuer, account holder, beneficiary owner or any other person concerned;

(c) any matter relating to the business or transaction of any security deposited with the depository.

(2) If an enquiry has been initiated under sub-section (1) the depository, issuer, account-holder, beneficiary owner or any other person concerned shall furnish all information according to the requirement of the inquirer.

(3) Any person making an enquiry under sub-section (1) may, for the purpose of the said enquiry, enter into any premises under the ownership or possession of the depository, issuer or person under enquiry.

14. **Power of the Commission to issue certain orders or directions-** (1) If the Commission is satisfied to the effect that it is necessary so to do in the interest of investors or smooth development of security market or for the purpose of preventing the activities of any depository detrimental to the interest of investors or security market, the Commission may, in the interest of investors or security market, give appropriate order or direction to the depository, issuer or any other person connected with them.

(2) If a person refuses or fails to comply with the order or direction given by the Commission under sub-section (1) the Commission may, after giving the said person an opportunity of being heard, direct him to pay a fine not exceeding ten lakh taka and in the case where the concerned offence is continuing a further fine not exceeding ten thousand taka for each day of such refusal or failure after the said order is given.

(3) The fine payable under sub-section (2) shall be recoverable as a public demand.

15. **Penalty-** (1) If a person contravenes or attempts to contravene or abets the contravention of any provision of this Act, he shall be punishable with imprisonment for a term not exceeding five years, or with fine or with both.

(2) Where any person guilty of an offence mentioned in sub-section (1) is a company or any other body corporate each of its directors, managers or any other officer responsible for administration of its business shall be deemed to be guilty of the said offence, unless he proves

that the offence was committed without his knowledge, or that he exercised due diligence to prevent the commission of the offence.

16. Cognizance of offence- No court shall take cognizance of an offence punishable under this Act except on a complaint in writing made by the commission, and no court other than a court of session shall try the said offence.

17. Power to make regulations –(1) The Commission may by notification in the official Gazette, make regulations for carrying out the purposes of this Act:

Provided that, before the publication in the official Gazette, the proposed regulations shall be published in at least one Bengali and one English widely-circulated daily newspaper of the country inviting opinion, advice or objection thereon of all persons concerned:

Provided further that at least two weeks time shall be allowed for submitting the opinion, advice or objection.

(2) Where in any special case it is considered not appropriate in the public interest to invite opinion, advice or objection from the persons concerned under sub-section (1), The Commission may make the regulations concerned after consultation with the Government and by notification in the official Gazette.

18. Power to make bye-laws- A depository may, with the prior approval of the Commission, make bye-laws not inconsistent with the regulations for carrying out the purposes of this Act.

19. Power to grant exemption in certain cases- The Commission may, after consultation with the Government and by notification in the official Gazette, declare any specific provision of this Act not to be applicable in the case of any specified person for the period mentioned in the notification.

20. Provision relating to winding up- Except with the prior approval of the Commission and the observance of formalities prescribed by regulations, the winding up of a depository shall not be effective.

21. Prima-facie evidence of any matter included in a depository- Any account or sub-account of a depository or any matter included in the register thereof shall, on the basis of the certificate given by the concerned depository, be admissible to a court as a prima facie evidence.

22. Taking over of management- If it appears to the Commission that any depository-

(a) has failed or is neglecting to protect the interest of investors; or

(b) is engaged in the control of capital market for dishonest purpose; or

(c) is doing something prejudicial to economic interest of the state,

the Commission may, after giving the concerned depository a reasonable opportunity of being heard, by order published in the official Gazette, take over the said depository for the period mentioned in the order, and carry on its administration and management.

23. Removal of difficulties- If any difficulty arises in giving effect to the provisions of this Act, the Commission may, with the prior approval of the Government and by notification in the official Gazette, take any action for removal of such difficulty:

Provided that no action shall be taken under this section after two years of the commencement of this Act.

24. Publication of English translation – After the commencement of this Act, the Commission shall, by notification in the official Gazette, publish an authentic text of an authorized translation in English of this Act which shall be called the Authentic English Text of this Act:

Provided that, in the case of any conflict between this Act and the said English Text, this Act shall prevail.”

By order of the Commission

M. A. Syed

Chairman