

MINISTRY OF FINANCE  
(DEPARTMENT OF COMPANY AFFAIRS)

**NOTIFICATION**

New Delhi, the 4<sup>th</sup> December, 2003

GSR\_922(E). – In exercise of the powers conferred by sub-section (1A) of section 81 of the Companies Act, 1956 read with section 642 of the said Act, the Central Government hereby makes the following rules, namely:-

**1. Short title and commencement.-**

- (1) These rules may be called Unlisted Public Companies (Preferential Allotment) Rules, 2003
- (2) They shall come into force on the date of their publication in the official gazette.

**2. Applicability.-**

These rules shall be applicable to all unlisted public companies in respect of preferential issue of equity shares, fully convertible debentures, partly convertible debentures or any other financial instruments, which would be convertible into or exchanged with equity shares at a later date.

**3. Definitions.-**

- (1) “Preferential Allotment” includes issue of shares on preferential basis and/or through private placement made by a company in pursuance of a resolution passed under sub-section (1A) of section 81 of the Companies Act, 1956 and issue of shares to the promoters and their relatives either in public issue or otherwise.
- (2) “Promoter” means –
  - (a) the person or persons who are in over-all control of the company; and
  - (b) the person or persons who hold themselves as promoters.

**Explanation:** Where a promoter of a company is a body corporate, the promoters of that body corporate shall also be deemed to be promoters of the company.

- (3) “control” shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their

shareholding or management rights or shareholders agreements or voting agreements or in any other manner.

#### **4. Special Resolution.-**

No issue of shares on a preferential basis can be made by a company unless authorized by its articles of association and unless a special resolution is passed by the members in a General Meeting authorizing the Board of Directors to issue the same. The special resolution shall be acted upon within a period of 12 months.

#### **5. Pricing.-**

Where warrants are issued on a preferential basis with an option to apply for and get the shares allotted, the issuing company shall determine before hand the price of the resultant shares.

#### **6. Disclosures.-**

The explanatory statement to the notice for the general meeting as required by section 173 of the Companies Act, 1956 shall contain the following particulars:

- (a) (a) the price or price band at which the allotment is proposed;
- (b) (b) the relevant date on the basis of which price has been arrived at;
- (c) (c) the object/s of the issue through preferential offer;
- (d) (d) the class or classes of persons to whom the allotment is proposed to be made;
- (e) (e) intention of promoters/directors/key management persons to subscribe to the offer;
- (f) (f) shareholding pattern of promoters and others classes of shares before and after the offer;
- (g) (g) proposed time within which the allotment shall be completed;
- (h) (h) whether a change in control is intended or expected.

#### **7. Audit Certificate.-**

In case of every issue of shares/warrants/fully convertible debentures/partly convertible debentures or other financial instruments with conversion option, the statutory auditors of the issuing company / company secretary in practice shall certify that the issue of the said instruments is being made in accordance with these Rules. Such certificate shall be laid before the meeting of the shareholders convened to consider the proposed issue.

[File No: 1/4/2003-CL-V]  
Rajiv Mehrishi, Jt. Secretary