



news flash

November 2011



RBI RELAXES NORMS FOR TRANSFER OF SHARES

The transfer of shares of an Indian company, by a person resident in India (“**Resident**”) to a person resident outside India (“**Non-Resident**”) and vice versa is governed by the Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations, 2000 (“**Regulations**”).

PRIOR POSITION IN LAW

The Regulations stated that prior approval of the Reserve Bank of India (“**RBI**”) had to be obtained in the following transactions:

1. Transfer of shares from a Resident to a Non-Resident:
 - (a) which do not conform to the pricing guidelines [The pricing guidelines issued by the RBI inter alia provide that a Resident cannot sell its shares in an Indian company to a Non Resident at a price lower than the price calculated on the discounted cash flow method, unless prior RBI approval has been obtained];
 - (b) which requires prior approval of the Foreign Investment Promotion Board (“**FIPB**”) as per the extant foreign direct investment (“**FDI**”) policy;
 - (c) if the Indian company whose shares are being transferred renders financial services; or
 - (d) where the transfer falls under the purview of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations (“**Takeover Regulations**”).
2. Transfer of shares from a Non Resident to a Resident which does not conform to the pricing guidelines issued by the RBI. The pricing guidelines issued by the RBI inter alia provide that a Resident cannot purchase shares of an Indian company from a Non Resident at a higher than the price calculated on the discounted cash flow method, unless the prior RBI approval has been obtained.

CHANGE IN LAW

In order to liberalize the procedures and policies pertaining to transfer of shares of an Indian company, the RBI has issued a circular on 4 November 2011 stating that prior RBI approval will not be required in the following cases:

1. Transfer of shares from Resident to Non Resident:
 - (a) Where the transfer of shares requires prior FIPB approval, if:
 - (i) the requisite FIPB approval has been obtained; and
 - (ii) the transfer of shares adheres to the pricing guidelines and documentation requirements specified by the RBI.
 - (b) Where the Takeover Regulations are applicable, subject to the compliance with the pricing guidelines and documentation requirements specified by the RBI.
 - (c) Where the pricing guidelines are not complied, if:
 - (i) the resultant investment is in compliance with the FDI policy and exchange control regulations;
 - (ii) the pricing for the transaction is in compliance with the relevant SEBI regulations; and
 - (iii) a chartered accountant's ("CA") certificate indicating compliance with the relevant SEBI regulations, as stated above is attached to the form FC-TRS to be filed with the authorized dealer bank ("AD Bank"). Form FC-TRS is required to be filed with the AD Bank at the time of transfer of shares from Non Resident to a Resident and vice versa.
 - (d) Where the investee company is rendering services in the financial sector, if:
 - (i) no objection certificates ("NOCs") are obtained from the respective financial sector regulator(s) of the investee company as well as transferor and transferee entities and such NOCs are filed along with the form FC-TRS, to be filed with the AD Bank; and
 - (ii) the FDI policy and the exchange control regulations are complied with.
2. Transfer of shares from a Non Resident to Resident, where the pricing guidelines are not complied with, if:-
 - (a) the original and resultant investment are in compliance with the FDI policy and exchange control regulations;
 - (b) the pricing for the transaction is in compliance with the relevant SEBI regulations; and
 - (c) a CA certificate indicating compliance with the relevant SEBI regulations, as stated above is attached to the form FC-TRS to be filed with the AD Bank.

IMPACT OF THE REFORM

The liberalization of the policy pertaining to transfer of shares considerably reduces the number of applications which would have been made to the RBI for the transfer of shares from Resident to Non Resident and vice versa.

Further, the change in policy smoothens the process of transfer of shares and reduces procedural requirements as long as certain conditions (i.e. SEBI regulations, exchange control regulations, pricing guidelines) are complied with.

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