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NEWSALERT

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Relaxation of norms for issuance of securities against various remittances

Under the current Foreign Direct Investment ('**FDI**") Policy, an Indian company, under the automatic route, may issue shares/convertible debentures to a person resident outside India, being a provider of technology/technical know-how, against royalty or lump-sum technical know-how fee, against External Commercial Borrowings ("**ECB**") (other than import dues deemed as ECB or trade credit as per RBI guidelines) and against import of capital goods by units in Special Economic Zones, subject to certain conditions like entry route, sectoral cap, pricing guidelines and compliance with the applicable tax laws.

The extant guidelines for issue of shares/convertible debentures under the automatic route have been reviewed, and, accordingly, it has been decided to permit issue of equity shares against any other funds payable by the investee company (which could also be pursuant to services offered to the investee company), remittance of which shall not require prior permission of the Government of India or Reserve Bank of India under FEMA, 1999 or any rules/ regulations framed or directions issued thereunder, subject to the conditions mentioned below:

i. The equity shares shall be issued in accordance with the extant FDI guidelines on sectoral caps, pricing guidelines etc. as amended by Reserve bank of India, from time to time. However, issue of shares/convertible debentures that require Government approval in terms of paragraph 3 of Schedule 1 of Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations, 2000, or import dues deemed as ECB or trade credit or payable against import of second hand machinery shall continue to be dealt in accordance with extant guidelines; and

ii. The issue of equity shares under this provision shall be subject to tax laws as applicable to the funds payable and the conversion to equity should be net of applicable taxes.

All the other conditions for issuance of equity shares under the automatic route and Government approval route shall remain unchanged.

IndusLaw Quick View*:*

This move by the Government of India is applauded and welcomed. The need to do away with prior approval for issuance of shares to a person resident outside India in case the transaction did not fall under the provisions of the extant policy was being felt for a long time. This step will ensure ease in procedure in terms of accepting investments from a person resident outside India.

INDUSLAW

BANGALORE
101, I Floor, "Embassy Classic" # 11, Vittal Mallya Road,
Bangalore 560 001, India
Tel: +91 80 4072 6600
Fax:+91 80 4072 6666
bangalore@induslaw.com

DELHI
A-4, Sector 26
Noida 201 301
NCR of Delhi, India
Tel: +91 120 472 8100
Fax: +91 120 472 8114
delhi@induslaw.com

MUMBAI
1002A, 10th Floor, Tower 2
Indiabulls Finance Centre
Senapati Bapat Marg
Elphinstone Road,
Mumbai 400 013
T: +91 22 4920 7200
mumbai@induslaw.com

HYDERABAD
204, Ashoka Capitol, Road No. 2, Banjarahills,
Hyderabad 500 034, India
Tel : +91 40 4026 4624
Fax: +91 40 4004 0979
hyderabad@induslaw.com