

REFORMS: PRICING FOR TRANSFERS/EXITS

We had discussed in our previous alert, how the government has relaxed pricing norms for issuance of shares, warrants and partly paid shares. RBI has now also issued a circular to all Category I Authorized Dealer Banks dated July 15, 2014 with respect to pricing for transfer of shares involving foreign investment. With respect to transfers of such shares, the circular provides as follows:

- For listed companies
 - Transfer from a resident to non-resident- shall not be at price less than the price at which a preferential allotment of shares can be made under the SEBI Guidelines.
 - Transfer from non-resident (non-resident entity, erstwhile OCB, foreign national, NRI, FII, QFI and RFPI) to a resident- shall not be at a price more than the price at which a preferential allotment of shares can be made under the SEBI Guidelines.
- For unlisted entities
 - Transfer from a resident to non-resident- shall be at a price not less than the fair value worked out as per any internationally accepted pricing methodology for valuation of shares on arm's length basis. Such pricing should be duly certified by a Chartered Accountant or a SEBI registered Merchant Banker.
 - Transfer from non-resident to a resident- shall not be at a price more than the fair value worked out as per any internationally accepted pricing methodology for valuation of shares on arm's length basis. Such pricing should be duly certified by a Chartered Accountant or a SEBI registered Merchant Banker.
- Exits from the investment in equity shares, compulsorily convertible debentures and compulsorily convertible preference shares
 - Such exits should happen at a price not exceeding the price arrived at as per any internationally accepted pricing methodology on an arm's length basis. Such pricing should be duly certified by a Chartered Accountant or a SEBI registered Merchant Banker. This circular therefore supersedes the provision under the notification dated January 9, 2014 which contemplated that exits for unlisted entities should be at a price not exceeding that arrived at on the basis of return on equity (RoE) as per the latest audited balance sheet.

IndusLaw Quick View: By issuing this circular, it has been ensured that the same pricing conditions be followed with respect to issuance of shares, their transfers and exits. The foreign investors now have a clear indication of what price they can invest at and what price they could expect during an exit. Though, the requirement of pricing for cap (on exit) and floors (on entry) by foreign investors have been retained, the relaxation in the methodology for calculating such pricing is a welcome move. By making the shift from a policy of prescribing the method of pricing, to leaving it to be decided by experts in accordance with internationally accepted standards, government has taken a step forward towards its commitment of liberalizing norms regarding foreign investment. We have observed that foreign investors have been seeking clarity with respect to Indian regulations on entry and exit pricing for some time. This move by the government is a large step forward towards addressing this ask, and helping India regain some of its fading sheen as a preferred destination for investment.



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