

Corpsec Hotline

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TRANSFER OF SHARES BETWEEN RESIDENTS AND NON-RESIDENTS NOW UNDER AUTOMATIC ROUTE

The Reserve Bank of India ("RBI"), vide its circular No. 16 dated October 4, 2004 ("Circular"), has significantly simplified the procedure for foreign investment into India by doing away with the requirement of obtaining prior governmental approval for the transfer of shares / convertible debentures of Indian companies.

Thus, the sale of shares / convertible debentures, by:

1. a person resident in India to a person resident outside India (including foreign national, non-resident Indian and a Foreign Institutional Investor, but excludes the Overseas Corporate Bodies); and
2. a person resident outside India to a person resident in India,

which previously required prior approval of the Foreign Investment Promotion Board ("FIPB") and / or the RBI, as the case may be, have now been brought under the automatic route, subject to certain conditions including pricing norms, sectoral cap, etc.

However, this benefit has not been extended to transfer of shares from a resident to non-resident relating to Indian Companies in the financial services sector (i.e. banks, non banking financial companies and insurance). Further, non-resident Indians, who have purchased shares under the Portfolio Investment Scheme, have been restricted from transferring the shares by way of sale under private arrangement.

As a post-transfer compliance, such transactions will have to be notified to the RBI in the form prescribed in the Circular, along with certain documents including inter alia consent letters from the transferor and the transferee, certificate from Chartered Accountant, etc.

The above move by the RBI demonstrates their commitment to de-bureaucratize the foreign investment regime and smoothen the process by cutting down on the time delays that are part and parcel of transactions involving transfer between residents and non-residents.

You can direct your queries or comments to *Kishore Joshi*

Source: *The Reserve Bank of India*

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