Transfer of shares on deferred basis

While executing transactions involving the acquisition of shares, it may be agreed between the parties to defer the payment of whole or part of the consideration. Recognising the need to facilitate such market practice, the Reserve Bank of India (RBI) has permitted transfer of shares between a resident buyer and a non-resident seller or vice-versa on deferred basis subject to the following conditions:

1. Not more than 25 per cent of the total consideration can be paid by the buyer on deferred basis.

2. The consideration payable on deferred basis should be paid within a period of 18 months from the date of the transfer agreement.

3. The buyer and seller can enter into an escrow arrangement in respect of the consideration payable as above on deferred basis.

4. In case the total consideration is paid by the buyer to the seller, the seller can furnish an indemnity to the buyer for an amount not exceeding 25 per cent of the total consideration for a period not exceeding 18 months from the date of payment of the full consideration.

The total consideration finally paid must be compliant with the applicable pricing guidelines.

Hitherto, transfer of shares on deferred basis was permitted with a prior approval of the RBI.

Our comments

This is a welcome move and can help save time while implementing transactions involving the acquisition of shares on deferred consideration basis.

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1 Notification No. FEMA 368/2016-RB, dated 20 May 2016 – Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Seventh Amendment) Regulations, 2016.
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