

# LÉGALÍCS

## Transfer of Shares from Non-residents to Residents

The information provided herein is of general nature and not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and updated insight, we do not guarantee that such information is accurate as on date.

## Transfer of Shares from Non-residents to Residents

1. Under Indian foreign exchange regulations, general permission is available for transfer of shares / convertible debentures between non-residents (“NR”) and Indian residents (“IR”) by way of gift or sale under private arrangement. Further, a non resident (other than non-resident Indian (“NRI”) and overseas corporate bodies (“OCB”)) may also transfer, by way of sale or gift, its shares or convertible debentures to any person resident outside India (including NRIs but excluding OCBs). However, transfer of shares from NRI to NR will require Reserve Bank of India (“RBI”) prior approval.
  
2. Transfer of shares from NR to IR or vice versa is subject to the following:
  - a. activities of the investee company are under automatic route;
  - b. sectoral limits under foreign direct investment policy are not breached;
  - c. sale consideration is in compliance with the pricing guidelines; and
  - d. such transfer is not subject to Indian Takeover Code;

If a transfer does not meet any of the above requirements, a prior RBI approval will be necessary.
  
3. There are certain reporting / procedural requirements under Indian Foreign Exchange Regulations and the Indian Companies Act relating to transfer of shares, as briefly discussed below.

### Requirement under (Indian) Foreign Exchange Regulations

- (a) An NR can transfer, by way of sale, shares of an Indian company under private arrangement to an IR, subject to the following:
  - (i) Sale consideration must be determined as per the following pricing guidelines:
    - a. In case of a listed company: Sale consideration must not be more than the minimum price at which preferential allotment of shares are made under Securities Exchange Board of India (“SEBI”) Guidelines.

- b. In case of an unlisted company: Sale consideration must not be more than the fair value of shares determined as per any internationally accepted pricing methodology on arm's length basis and duly certified by a Chartered Accountant or a SEBI registered Merchant Banker.
- (ii) Sale consideration (net of taxes) must be remitted outside India through an authorised dealer ("AD") bank.
- (iii) Transfer of shares must be reported in Form FC-TRS to RBI through an AD bank within 60 days of receipt / remittance of sale consideration. The onus of submission of the said Form FC-TRS is on the transferor / transferee resident in India.
- (b) Usually, the following documents are required to be submitted to the AD bank along with the Form FC-TRS:

- (i) Consent letters signed by the transferor and the transferee, or their duly appointed agent, indicating the details of transfer, i.e. number of shares to be transferred, the name of the investee company whose shares are being transferred and the price at which shares are being transferred.

In case there is no formal sale agreement, letters exchanged to this effect may be kept on record.

- (ii) Where the consent letter is signed by an agent, the power of attorney authorizing the agent to purchase/sell shares by the transferor / transferee.
- (iii) The shareholding pattern of the investee company before and after transfer of shares showing equity participation of residents and non-residents category-wise.
- (iv) If the transferor is an NRI/OCB, the copies of RBI approvals evidencing the shares held by them on repatriation/non-repatriation basis. The sale proceeds shall be credited to non-resident (external) rupee account / non-resident ordinary rupee account, as applicable.
- (v) Certificate from a chartered accountant indicating fair value of shares.
- (vi) Undertaking from the transferee to the effect that the pricing guidelines have been adhered to.

- (vii) No objection / tax clearance certificate from the Income Tax Authority / Chartered Account.
- (c) Settlement of transactions will be subject to payment of applicable taxes, if any.

Requirement under the (Indian) Companies Act, 2013

- (a) In order to transfer shares, an instrument of transfer called securities transfer form (“STF”) will need to be executed by transferor and transferee. The duly executed and stamped STF must be delivered to the company within two months of its execution. A stamp duty on the value of the shares (i.e. consideration or the fair value, whichever is higher) will need to be paid in Indian rupees.
- (b) Once the STF is lodged with the company, the latter will hold a Board meeting and transact the following business:
  - (i) approve and record the transfer of the shares; and
  - (ii) endorse the transfer on share certificate in favour of the transferee.
- (c) The transferee / his agent must submit to the company a certificate in the Form FC-TRS endorsed by the AD bank that the payment has been made by the transferee. On receipt of the said certificate, the company may record the transfer in its books.

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