

Review of the existing Foreign Direct Investment policy on Partly Paid Shares and Warrants

NOTES

Analysis of Press Release No. 9 issued by Department of Industrial Policy & Promotion

The department of Industrial Policy and Promotion has issued a Press Release No. 9 dated 16th September, 2015 for amending clause 2.1.5 of the FDI Policy.

Earlier, clause 2.1.5 read as follows:

‘Capital’ means equity shares; fully, compulsorily & mandatorily convertible preference shares; fully, compulsorily & mandatorily convertible debentures.

Note: Warrants and partly paid shares can be issued to person/(s) resident outside India only after approval through the Government route¹.

The revised clause 2.1.5 will read as follows:

“‘Capital’ means equity shares; fully, compulsorily & mandatorily convertible preference shares; fully, compulsorily & mandatorily convertible debentures *and warrants*.

Note: The equity shares issued in accordance with the provisions of the Companies Act, as applicable, shall include equity shares that have been partly paid. Preference shares and convertible debentures shall be required to be fully paid, and should be mandatorily and fully convertible. Further, ‘warrant’ includes Share Warrant issued by an Indian Company in accordance to provisions of the Companies Act, as applicable.”

Insertion of a new para after 3.3.3 of Consolidated FDI Policy Circular of 2015

3.3.3 bis: Acquisition of warrants and partly paid-up shares: An Indian company may issue warrants and partly paid shares to a person resident outside India subject to the terms and conditions as stipulated by the Reserve Bank of India in this behalf, from time to time.

The complete notification is published below for reference.

Government of India
Ministry of Commerce & Industry
Department of Industrial Policy & Promotion
Press Note No. 9 2015 Series

Subject: Review of the existing Foreign Direct Investment policy on Partly Paid Shares and Warrants

1.0 The Government has reviewed the provisions of the extant FDI policy on the captioned subject and it has been decided to allow partly paid shares and warrants as eligible capital instruments for the purposes of FDI policy. Accordingly, the following amendments are made in the 'Consolidated FDI Policy Circular of 2015', effective from May 12, 2015:

(i) Para 2.1.5 is amended to read as below:

“‘Capital’ means equity shares; fully, compulsorily & mandatorily convertible preference shares; fully, compulsorily & mandatorily convertible debentures and warrants.

Note: The equity shares issued in accordance with the provisions of the Companies Act, as applicable, shall include equity shares that have been partly paid. Preference shares and convertible debentures shall be required to be fully paid, and should be mandatorily and fully convertible. Further, ‘warrant’ includes Share Warrant issued by an Indian Company in accordance to provisions of the Companies Act, as applicable.”

(ii) Insertion of a new para after para 3.3.3 of Consolidated FDI Policy Circular of 2015:

3.3.3 bis: Acquisition of Warrants and Partly Paid Shares – An Indian company may issue warrants and partly paid shares to a person resident outside India subject to terms and conditions as stipulated by the Reserve Bank of India in this behalf, from time to time.

2.0 The above decision will take immediate effect.

(Atul Chaturvedi)

Joint Secretary to Government of India

Clarification on FDI Policy on Facility Sharing Arrangements between Group Companies
NOTES

Analysis of Clarification dated 15th September, 2015 issued by Department of Industrial Policy & Promotion

The Department of Industrial Policy and Promotion has issued a clarification dated 15th September, 2015 w.r.t. that whether Facility sharing arrangements between the group companies shall be construed as 'real estate' business activity or not.

The department clarified that:

Facility Sharing Arrangements between group companies through leasing/sub-leasing arrangements for the larger interest of the business will not be treated as 'real estate business' within the provisions of the Consolidated FDI Policy Circular of 2015 subject to the conditions laid down as under:

- 1. Arrangements shall be made at Arm's Length price as per relevant provisions of Income Tax Act, 1961**
- 2. Lessor company's annual rental income does not exceed 5% of its total revenue.**

The complete clarification is published below for reference.

Government of India

Ministry of Commerce & Industry

Department of Industrial Policy & Promotion

Clarification on FDI Policy on Facility Sharing Arrangements between Group Companies

This Department has received certain references on the issue as to whether entering into facility sharing agreements through leasing/sub-leasing arrangements within group companies for the larger purposes of business activities would be construed to mean 'real estate' business within the provisions of Consolidated FDI Policy Circular of 2015.

2. In this regard it is hereby clarified that:

“Facility sharing agreements between group companies through leasing/sub-leasing arrangements for the larger interest of business will not be treated as 'real estate business' within the provisions of the Consolidated FDI Policy Circular of 2015, provided such arrangements are at arm's length price in accordance with relevant provisions of Income Tax Act 1961, and annual lease rent earned by the lessor company does not exceed 5% of its total revenue.

(R.D Diwakar)

Under Secretary to the Government of India

D/o IPP File No.: No. 12/15/2009-FC-1 dated 15th September, 2015