RBI recognises partly paid up shares and warrants as permissible instruments for foreign investments

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In brief

The Reserve Bank of India (RBI) has recognized partly paid equity shares and warrants issued by an Indian company as eligible instruments for the purpose of Foreign Direct Investment (FDI) and Foreign Portfolio Investment (FPI).

In detail

Issue of these instruments need compliance with following conditions:

Pricing

Partly paid equity shares

Needs to be determined upfront

Warrants

Price/ conversion formula shall be determined upfront.

The price at the time of conversion should not in any case be lower than the fair value worked out, at the time of issuance of such warrants, in accordance with the extant FEMA Regulations and pricing guidelines stipulated by RBI from time to time.

Thus, Investee Company shall be free to receive consideration more than the pre-agreed price.

Receipt of consideration

Partly paid equity shares

- 25% of the total consideration (including share premium, if any) must be received upfront.
- The balance consideration towards fully paid up equity shares should be received within a period of 12 months. The time period for receipt of the balance consideration will not be insisted upon:
  - Where the issue size exceeds rupees five hundred crore, and
  - In case of a listed Company - the Indian Company complies with Regulation 17 of the SEBI (ICDR) Regulations[1] regarding monitoring agency;
  - In case of an unlisted Company – the Indian Company appoints a monitoring agency (Authorised Dealer Category-I Bank) on the same lines as required in case of a listed Indian company under the SEBI (ICDR) Regulations[1].

Warrants

- 25% of the consideration amount must be received upfront.
- The balance consideration should be received within a period of 18 months.

Reporting

The reporting guidelines as applicable to issue of equity instruments will apply towards each upfront/call payment for partly paid up equity shares and warrants viz.

[1] SEBI (Issue of Capital and Disclosure Requirements (ICDR)) Regulations

- Receipt of foreign inward remittance – **Advance Reporting Form**
- Issue of Shares – **Form FC - GPR** (to the extent the equity shares are called up)
- Transfer of Shares – **Form FC-TRS** (to the extent the equity shares are called up)
- Purchase/ sale of partly paid shares/ warrants by FII/ RFPIs- **Form LEC**.

The identity of non-resident investor needs to be disclosed for the purpose of compliance with KYC norms at the time of issuance of warrants.

Other Conditions

- The initial and resultant investment post conversion of partly paid up shares/ warrants into fully paid equity shares shall be in line with the extant FDI policy and FEMA regulations in terms of sectoral caps, entry route and other conditionalities.
- No separate approval from the RBI will be required to forfeit upfront amount/ subsequent call monies on non-payment of call money. Nevertheless, the issue/ transfer/ forfeiture will have to comply with the requirements under the Companies Act, 2013 and tax laws.
- Further, Non-Resident Indians (NRIs) shall also be eligible to invest on non-repatriation basis in partly-paid shares and warrants issued by Indian companies in accordance with the provisions Schedule 4 of FEMA 20, Companies Act/ SEBI guidelines/ income-tax provisions, as applicable.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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