

Indian Government Reverses Controversial Policy on Options in Securities

A little more than a month ago the Government of India issued a revised policy for foreign direct investments into India. While many of the amendments were routine, a key change was to treat equity and equity-linked securities with 'in-built options of any kind' issued to overseas investors as external commercial borrowings thus subjecting them to a much more onerous regime than straightforward investments in such securities. Prior to this policy announcement, the Reserve Bank of India (RBI) had, in some cases, been adopting this stance and refusing to permit the exercise of cross border put options in equity investments. The objection stemmed from the use of put options in equity investments as a method of guaranteeing returns to foreign investors and providing financial protection against their Indian investments.

This new policy was hugely controversial and raised strong objections in legal and business community particularly foreign financial investors such as private equity funds where put and call options with promoters are an integral part of deals and exit strategies.

However, on 31 October, the Indian Government, in the face of concerns, surprisingly revised its policy and removed the contentious paragraph. It remains to be seen whether the RBI will now adopt a more liberal approach to options and modify its stance in line with this amendment.

If you have any questions, please feel free to contact any of your regular contacts at the firm.

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