

**RBI/2014-15/129**  
**A. P. (DIR Series) Circular No. 4**

**July 15, 2014**

To,

All Category –I Authorised Dealer Banks

Madam/Sir,

**Foreign Direct Investment (FDI) in India -  
Issue/Transfer of Shares or Convertible Debentures  
- Revised pricing guidelines**

Attention of Authorized Dealers Category – I (AD Category - I) banks is invited to Regulation 10(A)(b)(i), para 5 of Schedule 1, para 1(5) of Schedule 2 and para 2(iv) of Schedule 2A to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 (the Principal Regulations) notified vide [Notification No. FEMA.20/2000-RB dated May 3, 2000](#) as amended from time to time, in terms of which, transfer/issue of shares of an Indian company is subject to pricing guidelines stipulated by the Reserve Bank and to [A.P. \(DIR Series\) Circular No. 49 dated May 04, 2010](#), depicting the comprehensive position in this regard.

2. Attention of AD Category-I banks is also invited to Regulation 9 of the Principal Regulations read with [A.P. \(DIR Series\) Circular No. 86 dated January 9, 2014](#) in terms of which optionality clauses have been allowed in equity shares and compulsorily and mandatorily convertible preference shares/debentures to be issued to a person resident outside India under the Foreign Direct Investment (FDI) scheme subject to conditions mentioned therein.

3. The extant pricing guidelines in respect of transfer/issue of shares and for exit from investment in equity shares with or without optionality clauses of listed/unlisted Indian companies have since been reviewed so as to provide greater freedom and flexibility to the parties concerned under the FDI framework. The new pricing guidelines shall be as under:

**(i) In case of listed companies**

(a) The issue and transfer of shares including compulsorily convertible preference shares and compulsorily convertible debentures shall be as per the SEBI guidelines;

(b) The pricing guidelines for FDI instruments with optionality clauses shall continue to be in accordance with A.P. (DIR Series) Circular No. 86 dated January 9, 2014, i.e., the non-resident investor shall be eligible to exit at the market price prevailing on the recognised stock exchanges subject to lock-in period as stipulated, without any assured return.

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**(ii) In case of unlisted companies**

The issue and transfer of shares including compulsorily convertible preference shares and compulsorily convertible debentures with or without optionality clauses shall be at a price worked out as per any internationally accepted pricing methodology on arm's length basis. Thus, the guiding principle will be that the non-resident investor is not guaranteed any assured exit price at the time of making such investment/agreement and shall exit at a fair price computed as above at the time of exit subject to lock-in period requirement as applicable in terms of A.P. (DIR Series) Circular No. 86 dated January 9, 2014.

4. The changes in the existing pricing guidelines for FDI applicable to transfer/issue of shares and for exit from foreign direct investment with optionality clauses for the unlisted Indian companies are given in the [Annex 1](#) and [Annex 2](#) respectively.

5. An Indian company taking on record in its books any transfer of its shares or convertible debenture by way of sale from a resident to a non-resident and a non-resident to a resident shall disclose in its balance sheet for the financial year, in which the transaction took place, the details of valuation of share or convertible debentures, the pricing methodology adopted for the same as well as the agency that has given/certified the valuation.

6. These directions shall come into effect from the date of the publication of the relative Notification in the Official Gazette.

7. All the other instructions of [A. P. \(DIR Series\) Circular No.16 dated October 4, 2004](#) read with A.P. (DIR Series) Circular No.49 dated May 4, 2010 and A.P. (DIR Series) Circular No. 86 dated January 9, 2014 shall remain unchanged.

8. AD Category - I banks may bring the contents of this circular to the notice of their constituents and customers.

9 Reserve Bank has since amended the Principal Regulations through the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Seventh Amendment) Regulations, 2014 notified vide [Notification No. FEMA.306/2014-RB dated May 23, 2014](#) c.f. G.S.R. No. 435(E) dated July 8, 2014.

10. The directions contained in this circular have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law.

Yours faithfully,

**(B.P. Kanungo)**  
**Principal Chief General Manager**

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**Annex 1**

**(A.P. (DIR Series) Circular No. 4 dated 15.07.2014)**

Sr. No.	Issue/Transfer of Shares	Existing Provisions	Revised Provisions
1.	<b>Issue of Shares</b>	<p><b>Issue of Shares to non-residents</b></p> <p>Price of shares issued to persons resident outside India under this Schedule, shall not be less than</p> <p>(a) the price worked out in accordance with the SEBI guidelines, as applicable, where the shares of the company is listed on any recognised stock exchange in India;</p> <p>(b) the fair valuation of shares done by a SEBI registered Category - I Merchant Banker or a Chartered Accountant as per the discounted free cash flow method, where the shares of the company is not listed on any recognised stock exchange in India ; and</p> <p>(c) the price as applicable to transfer of shares from resident to non-resident as per the pricing guidelines laid down by the Reserve Bank from time to time, where the issue of shares is on preferential allotment.</p>	<p><b>Issue of Shares to non-residents</b></p> <p>Price of shares issued to persons resident outside India under this Schedule, shall not be less than</p> <p><b>No Change in existing clause (a)</b></p> <p>(b) the fair valuation of shares done as per any internationally accepted pricing methodology for valuation of shares on arm's length basis, duly certified by a Chartered Accountant or a SEBI registered Merchant Banker where the shares of the company are not listed on any recognised stock exchange in India</p> <p><b>This provision is omitted</b></p>
2.	<b>Transfer of Shares</b>	<p><b>Transfer by Resident to Non-resident</b> (i.e. to foreign national, NRI, FII and incorporated non-resident entity other than erstwhile OCB)</p> <p>(a) where shares of an Indian company are listed on a recognized stock exchange in India, the price of shares transferred by way of sale shall not be less than the price at which a</p>	<p><b>Transfer by Resident to Non-resident</b> (i.e. to foreign national, NRI, FII, QFI, RFPI and incorporated non-resident entity other than erstwhile OCB)</p> <p><b>No Change in the existing clause (a)</b></p>

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		<p>preferential allotment of shares can be made under the SEBI Guidelines, as applicable, provided that the same is determined for such duration as specified therein, preceding the relevant date, which shall be the date of purchase or sale of shares.</p> <p>(b) where the shares of an Indian company are not listed on a recognized stock exchange in India, the transfer of shares shall be at a price not less than the fair value to be determined by a SEBI registered Category – I - Merchant Banker or a Chartered Accountant as per the discounted free cash flow method.</p> <p>The price per share arrived at should be certified by a SEBI registered Category-I-Merchant Banker / Chartered Accountant.</p>	
3.	<b>Transfer of Shares</b>	<p><b>Transfer by Non-resident</b> (i.e. by incorporated non-resident entity, erstwhile OCB, foreign national, NRI and FII) <b>to Resident</b></p> <p>Price of shares transferred by way of sale, by non-resident to resident shall not be more than the minimum price at which the transfer of shares can be made from a resident to a non-resident as given in para 2 above.</p>	<p>(b) where the shares of an Indian company are not listed on a recognized stock exchange in India, the transfer of shares shall be at a price not less than the fair value worked out as per any internationally accepted pricing methodology for valuation of shares on arm's length basis which should be duly certified by a Chartered Accountant or a SEBI registered Merchant Banker.</p> <p><b>Transfer by Non-resident</b> (i.e. by incorporated non-resident entity, erstwhile OCB, foreign national, NRI, FII, QFI and RFPI) <b>to Resident</b></p> <p><b>No Change in the existing clause</b></p>

**Annex 2**

**(A.P. (DIR Series) Circular No.4 dated 15.07.2014 )**

c.f. Annex to A.P.(DIR Series) Circular No. 86 dated January 9, 2014	Earlier condition	Revised condition
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<p>Para 2(b)</p>	<p>(ii) In case of unlisted company, the non-resident investor shall be eligible to exit from the investment in equity shares of the investee company at a price not exceeding that arrived at on the basis of Return on Equity (RoE) as per the latest audited balance sheet. Any agreement permitting return linked to equity as above shall not be treated as violation of FDI policy/FEMA Regulations.</p> <p>Note: For the above purpose, RoE shall mean Profit After Tax / Net Worth; Net Worth would include all free reserves and paid up capital.</p> <p>(iii) Investments in Compulsorily Convertible Debentures (CCDs) and Compulsorily Convertible Preference Shares (CCPS) of an investee company may be transferred at a price worked out as per any internationally accepted pricing methodology at the time of exit duly certified by a Chartered Accountant or a SEBI registered Merchant Banker. The guiding principle would be that the non-resident investor is not guaranteed any assured exit price at the time of making such investment/agreement and shall exit at the price prevailing at the time of exit, subject to lock-in period requirement, as applicable.</p>	<p>(ii) In case of an unlisted company, the non-resident investor shall be eligible to exit from the investment in equity shares, Compulsorily Convertible Debentures (CCDs) and Compulsorily Convertible Preference Shares (CCPS) of the investee company at a price not exceeding that arrived at as per any internationally accepted pricing methodology on arm's length basis, duly certified by a Chartered Accountant or a SEBI registered Merchant Banker.</p> <p>The guiding principle would be that the non-resident investor is not guaranteed any assured exit price at the time of making such investment/agreements and shall exit at the fair price computed as above at the time of exit, subject to lock-in period requirement, as applicable.</p>
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