



**RESERVE BANK OF INDIA  
Foreign Exchange Department  
Central Office  
Mumbai - 400 001**

---

**RBI/2009-10/445**

**A. P. (DIR Series) Circular No.49**

**May 04, 2010**

To

All Category-I Authorised Dealer Banks

Madam / Sir,

**Foreign Direct Investment (FDI) in India -  
Transfer of Shares / Preference Shares / Convertible Debentures  
by way of Sale - Revised pricing guidelines**

Attention of the Authorised Dealer Category – I (AD Category - I) banks is invited to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000, notified vide [Notification No. FEMA 20/2000-RB dated May 3, 2000](#), as amended from time to time.

2. In terms of Schedule 1 of the Notification, an Indian company may issue equity shares, compulsorily convertible preference shares and compulsorily convertible debentures (equity instruments) to a person resident outside India under the FDI policy, subject to inter alia, compliance with the pricing guidelines. Further, in terms of the A. P. (DIR Series) Circular No.16 dated October 4, 2004 and A. P. (DIR Series) Circular No. 63 dated April 22, 2009, general permission is available for transfer of equity instruments, by way of sale, from residents to non-residents (including transfer of subscriber's shares) of an Indian company in sectors other than financial services sector (i.e. Banks, NBFCs, Insurance, Asset Reconstruction Companies, Infrastructure companies in securities market namely, Stock Exchanges, Depositories and Clearing Corporations, Credit Information Companies and Commodity Exchanges) from residents to non-residents and vice versa.

3. The extant guidelines have been reviewed in consultation with the Government of India and accordingly the pricing guidelines in respect of issue of shares including preferential allotment have been revised. [A copy of the Notification No. FEMA 205/2010-RB dated April 7, 2010](#), notified vide G.S.R. No.341 (E) dated April 21, 2010, amending the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 ([Notification No. FEMA 20/2000-RB dated May 3, 2000](#)) issued in this regard is enclosed (Annex-II).
4. Further, the pricing guidelines for transfer of equity instruments from a resident to a non-resident and vice versa issued vide A. P. (DIR Series) Circular No.16 dated October 4, 2004 have also been reviewed and the paragraph Nos. 2.2 and 2.3 of the Annex to the circular have been accordingly amended. The revised instructions applicable to transfer of shares of an Indian company in all sectors are given in the Annex-I. All the other instructions of A. P. (DIR Series) Circular No.16 dated October 4, 2004 shall remain unchanged.
5. These directions will become operative with immediate effect.
6. AD Category – I banks may bring the contents of this circular to the notice of their constituents and customers concerned.
7. 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 is without prejudice to permissions / approvals, if any, required under any other law.

Yours faithfully,

**(Salim Gangadharan)**

**Chief General Manager-in-Charge**

**Annex-I**  
**[Annex to A. P. (DIR Series) Circular No. 49**  
**dated May 04, 2010]**

<b>Paragraph No.</b> [cf. A.P.(DIR Series) Circular No. 16 dated October 4, 2004]	<b>Existing Provisions</b>	<b>Revised Provisions</b>
<p style="text-align: center;">2.2</p>	<p><b>Transfer by Resident to Non-resident</b> (i.e. to incorporated non-resident entity other than erstwhile OCB, foreign national, NRI, FII)</p> <p><b>Transfer of shares by way of sale, by resident to non-resident shall be at a price not less than</b></p> <p>a) the ruling market price, in case the shares are listed on stock exchange,</p> <p>b) fair valuation of shares done by a Chartered Accountant as per the</p>	<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 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</p>

	<p>guidelines issued by the erstwhile Controller of Capital Issues, in case of unlisted shares.</p> <p>The price per share arrived at should be certified by a Chartered Accountant.</p>	<p>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>
2.3	<p><b>Transfer by Non-resident</b> (i.e. by incorporated non-resident entity, erstwhile OCB, foreign national, NRI, FII) <b>to Resident.</b></p> <p>Sale of shares by a non-resident to resident shall be in accordance with Regulation 10 B(2) of Notification No. FEMA 20/2000-RB dated May 03,2000 which is as below:</p> <p><b>a) Where the shares of an Indian company are traded on stock exchange</b></p> <p>i) The sale is at the prevailing market price on stock exchange and is effected through a merchant banker registered with the SEBI or through a stock broker registered</p>	<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 2.2 above.</p>

with the stock exchange.

ii) if the transfer is other than that referred to in clause (i), the price shall be arrived at by taking the average quotations (average of daily high and low) for one week preceding the date of application with 5 per cent variation.

Where, however, the shares are being sold by the foreign collaborator or the foreign promoter of the Indian company to the existing promoters in India with the objective of passing management control in favour of the resident promoters the proposal for sale will be considered at a price which may be higher by up to a ceiling of 25 per cent over the price arrived at as above.

**(b) Where the shares of an Indian company are not listed on stock exchange or are thinly traded,**

i) if the consideration payable for the transfer does not exceed Rs. 20 lakh per seller per company, at a price mutually agreed to between the seller and the buyer, based on any valuation methodology currently in vogue, on submission

of a certificate from the statutory auditors of the Indian company whose shares are proposed to be transferred, regarding the valuation of the shares, and

ii) if the amount of consideration payable for the transfer exceeds Rs.20 lakh per seller per company, at a price arrived at, at the seller's option, in any of the following manner, namely:

A) a price based on earning per share (EPS) linked to the Price Earning (P/E) multiple, or a price based on the Net Asset Value (NAV) linked to book value multiple, whichever is higher,

or

B) the prevailing market price in small lots as may be laid down by the Reserve Bank so that the entire shareholding is sold in not less than five trading days through screen based trading system

or

C) where the shares are not listed on any stock exchange, at a price which is lower of the two independent valuations of share, one by statutory auditors of the company and the other by a Chartered Accountant or by a

	Merchant Banker in Category 1 registered with Securities and Exchange Board of India.	
--	---------------------------------------------------------------------------------------	--