



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

RBI/2004-05/207
A.P. (DIR Series) Circular No. 16

October 4, 2004.

To,

All Banks Authorised to Deal in Foreign Exchange

Madam/Sir,

FEMA - Foreign Direct Investment in India - Transfer of Shares/Convertible Debentures by way of Sale - Simplification of Procedures

Attention of the Authorised Dealer (AD) banks is invited to Regulations 10 A (b) and 10 B of 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 3rd May 2000 regarding transfer of shares/convertible debentures, by way of sale, from resident to non-resident and non-resident to resident respectively.

2. Transfer of shares/convertible debentures from residents to non-residents

2.1 At present, transfer of shares, by way of sale, by a person resident in India to a person resident outside India (i.e. to incorporated non-resident entity other than erstwhile OCB, foreign nationals, NRI, Foreign Institutional Investor (FII),) require prior permission of the Government followed by approval from Reserve Bank.

2.2 On a review, and with a view to make the environment in India more attractive to foreign investors and also to simplify procedures, Government has decided to dispense with the requirement of obtaining prior approval of the Government (FIPB) in respect of transfer of shares/convertible debentures, by way of sale, from residents to non-residents (including transfer of subscriber's shares) of an Indian company **in sectors other than financial service sector**

(i.e. Banks, NBFCs and Insurance) provided the following conditions are complied with:

- a) The activities of the investee company are under the automatic route under FDI policy (vide Annexure B to Schedule 1 to RBI Notification No. FEMA 20/2000-RB dated May 3, 2000 as amended from time to time) and transfer does not attract the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.
- b) The non-resident shareholding after the transfer, complies with sectoral limits under FDI policy.
- c) The price at which the transfer takes place is in accordance with the pricing guidelines prescribed by SEBI/RBI.

The onus of complying with the sectoral cap/limits prescribed under FDI policy as well as other guidelines/regulations would rest with the buyer and seller/issuer.

A copy of Press Release dated September 29, 2004 issued by the Ministry of Finance in this regard is enclosed.

3. Reserve Bank General Permission for transfer of shares/convertible debentures

3.1 At present, the following categories of transfer of shares/convertible debentures by way of sale under private arrangement also require prior permission of Reserve Bank.

- transfer by a person resident in India to person resident outside India
- transfer by a person resident outside India to a person resident in India

3.2 As a measure of further simplification of procedures, it has been decided to grant general permission and do away with the requirement of prior approval of Reserve Bank for transfer of shares and convertible debentures in respect of the aforesaid categories, under Para 3.1, subject to compliance of the terms and conditions and reporting requirements as furnished in the Annex. However, the general permission does not include transfer of shares from resident to non-resident in financial service sector as indicated in paragraph 2.2 above.

3.3 Accordingly, AD branches may consider requests received from their constituents/customers for receipt/payment of amount on account of such transfers in accordance with relevant Regulations, subject to obtaining the documents as detailed in paragraphs 5.1 and 5.2 of the Annex and ensure that the transactions have been carried out in accordance with the conditions

prescribed therein. They may also note to adhere to the reporting requirements as detailed in paragraph 6 of the Annex.

4. The Government has also clarified that cases of increase in foreign equity participation by fresh issue of shares as well as conversion of preference shares into equity capital is put under general permission provided such increase falls within the sectoral cap in relevant sectors and are within the automatic route.

5. These directions will become operative with immediate effect. Necessary amendments to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 are being issued separately.

6. Authorised Dealers may bring the contents of this circular to the notice of their constituents and customers.

7. The direction contained in this circular has 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

Grace Koshie
Chief General Manager

Encls: As above

Terms and conditions for Transfer of Shares/Convertible Debentures, by way of Sale, from a Person Resident in India to a Person Resident Outside India and from a Person Resident Outside India to a Person Resident in India

1.1 In order to address the concerns relating to pricing, documentation, payment/ receipt and remittance in respect of the shares/convertible debentures of an Indian company, other than a company engaged in financial service sector, transferred by way of sale; the parties involved in the transaction shall comply with the guidelines set out below.

1.2 Parties involved in the transaction are (a) seller (resident/non-resident), (b) buyer (resident/non-resident), (c) duly authorized agent/s of the seller and/or buyer, (d) Authorised Dealer (AD) branch and (e) Indian company, for recording the transfer of ownership in its books.

2. Pricing Guidelines

2.1 The under noted pricing guidelines are applicable to the following types of transactions:

- i. Transfer of shares, by way of sale under private arrangement by a person resident in India to a person resident outside India
- ii. Transfer of shares, by way of sale under private arrangement by a person resident outside India to a person resident in India

2.2 Transfer by Resident to Non-resident (ie. to incorporated non-resident entity other than erstwhile OCB, foreign national, NRI, FII)

Price of shares transferred by way of sale by resident to a non-resident shall not be less than

- (a) the ruling market price, in case the shares are listed on stock exchange,
- (b) fair valuation of shares done by a Chartered Accountant as per the guidelines issued by the erstwhile Controller of Capital Issues, in case of unlisted shares.

The price per share arrived at should be certified by a Chartered Accountant.

2.3 Transfer by Non-resident (i.e. by incorporated non-resident entity, erstwhile OCB, foreign national, NRI,FII) **to Resident**

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 3, 2000 which as below:

(a) Where the shares of an Indian company are traded on stock exchange,

i) The sale is at the prevailing market price on stock exchange and is effected through a merchant banker registered with Securities and Exchange Board of India or through a stock broker registered 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 percent 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 upto a ceiling of 25 percent 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.

Explanation:

- i) A share is considered as thinly traded if the annualized trading turnover in that share, on main stock exchanges in India, during the six calendar months preceding the month in which application is made, is less than 2 percent (by number of shares) of the listed stock.
- ii) For the purpose of arriving at Net Asset Value per share, the miscellaneous expenses carried forward, accumulated losses, total outside liabilities, revaluation reserves and capital reserves (except subsidy received in cash) shall be reduced from value of the total assets and the net figure so arrived at shall be divided by the number of equity shares issued and paid up. Alternatively, intangible assets shall be reduced from the equity capital and reserves (excluding revaluation reserves) and the figure so arrived at shall be divided by the number of equity shares issued and paid up. The NAV so calculated shall be used in conjunction with the average BV multiple of Bombay Stock Exchange National Index during the calendar month immediately preceding the month in which application is made and BV multiple shall be discounted by 40 per cent.
- iii) For computing the price based on Earning Per Share, the earning per share as per the latest balance sheet of the company shall be used in conjunction with the average Price Earning Multiple of Bombay Stock Exchange National Index for the calendar month preceding the month in which application is made and Price Earning shall be discounted by 40 per cent.

3. Responsibilities /Obligations of the parties

3.1 All the parties involved in the transaction would have the responsibility to ensure that the relevant regulations under FEMA are complied with and consequent on transfer of shares, the relevant individual limit/sectoral caps/foreign equity participation ceilings as fixed by Government are not breached. Settlement of transactions will be subject to payment of applicable taxes, if any.

4. Method of payment and remittance/credit of sale proceeds

4.1 The sale consideration in respect of the shares purchased by a person resident outside India shall be remitted to India through normal banking channels. In case the buyer is a Foreign Institutional Investor (FII), payment should be made by debit to its Special Non-Resident Rupee Account. In case the buyer is a NRI, the payment may be made by way of debit to his NRE/FCNR (B) accounts. However, if the shares are acquired on non-repatriation basis by NRI, the consideration shall be remitted to India through normal banking channel or paid out of funds held in NRE/FCNR (B)/NRO accounts.

4.2. The sale proceeds of shares (net of taxes) sold by a person resident outside India) may be remitted outside India. In case of FII the sale proceeds may be credited to its special Non-Resident Rupee Account. In case of NRI, if the shares sold were held on repatriation basis, the sale proceeds (net of taxes) may be credited to his NRE/FCNR(B) accounts and if the shares sold were held on non repatriation basis, the sale proceeds may be credited to his NRO account subject to payment of taxes.

4.3 The sale proceeds of shares (net of taxes) sold by an OCB may be remitted outside India directly if the shares were held on repatriation basis and if the shares sold were held on non-repatriation basis, the sale proceeds may be credited to its NRO (Current) Account subject to payment of taxes, except in the case of OCBs whose accounts have been blocked by Reserve Bank.

5. Documentation

Besides obtaining a declaration in the enclosed form FC-TRS (in quadruplicate), the AD branch should arrange to obtain and keep on record the following documents:

5.1 For sale of shares by a person resident in India

- i. Consent Letter duly signed by the seller and buyer or their duly appointed agent indicating the details of transfer i.e. number of shares to be transferred, the name of the investee company whose shares are being transferred and the price at which shares are being transferred. In case there is no formal Sale Agreement, letters exchanged to this effect may be kept on record.

- ii. Where Consent Letter has been signed by their duly appointed agent, the Power of Attorney Document executed by the seller/buyer authorizing the agent to purchase/sell shares.
- iii. The shareholding pattern of the investee company after the acquisition of shares by a person resident outside India showing equity participation of residents and non-residents category-wise (i.e. NRIs/OCBs/foreign nationals/incorporated non-resident entities/FIIs) and its percentage of paid up capital obtained by the seller/buyer or their duly appointed agent from the company, where the sectoral cap/limits have been prescribed.
- iv. Certificate indicating fair value of shares from a Chartered Accountant.
- v. Copy of Broker's note if sale is made on Stock Exchange
- vi. Undertaking from the buyer to the effect that he is eligible to acquire shares/convertible debentures under FDI policy and the existing sectoral limits and Pricing Guidelines have been complied with.
- vii. Undertaking from the FII/sub account to the effect that the individual FII/ Sub account ceiling as prescribed by SEBI has not been breached.

5.2 For sale of shares by a person resident outside India

- i. Consent Letter duly signed by the seller and buyer or their duly appointed agent indicating the details of transfer i.e. number of shares to be transferred, the name of the investee company whose shares are being transferred and the price at which shares are being transferred.
- ii. Where the Consent Letter has been signed by their duly appointed agent the Power of Attorney Document authorizing the agent to purchase/sell shares by the seller/buyer. In case there is no formal Sale Agreement, letters exchanged to this effect may be kept on record.
- iii. If the sellers are NRIs/OCBs, the copies of RBI approvals evidencing the shares held by them on repatriation/non-repatriation basis. The sale proceeds shall be credited NRE/NRO account, as applicable.
- iv. Certificate indicating fair value of shares from a Chartered Accountant.
- v. No Objection/Tax Clearance Certificate from Income Tax authority/Chartered Account.
- vi. Undertaking from the buyer to the effect that the Pricing Guidelines have been adhered to.

6. Reporting requirements

6.1 For the purpose the Authorized Dealers may designate branches to specifically handle such transactions. These branches could be staffed with adequately trained staff for this purpose to ensure that the transactions are put through smoothly. The ADs may also designate a nodal office to coordinate the work at these branches and also ensure the reporting of these transactions to the Reserve Bank.

6.2 When the transfer is on private arrangement basis, on settlement of the transactions, the transferee/his duly appointed agent should approach the investee company to record the transfer in their books along with the certificate in the form FC-TRS from the AD branch that the remittances have been received by the transferor/payment has been made by the transferee. On receipt of the certificate from the AD, the company may record the transfer in its books.

6.3 The actual inflows and outflows on account of such transfer of shares shall be reported by the AD branch in the R-returns in the normal course.

6.4 In addition the AD branch should submit two copies of the Form FC-TRS received from their constituents/customers together with the statement of inflows/outflows on account of remittances received/made in connection with transfer of shares, by way of sale, to IBD/FED/or the nodal office designated for the purpose by the bank in the enclosed proforma (which is to be prepared in MS-Excel format). The IBD/FED or the nodal office of the bank will in turn submit a consolidated monthly statement in respect of all the transactions reported by their branches together with a copies of the FC-TRS forms received from their branches to Foreign Exchange Department, Reserve Bank, Foreign Investment Division, Central Office, Mumbai in a soft copy (in MS- Excel)in by e-mail to fdidata@rbi.org.in

6.5 Shares purchased / sold by FIIs under private arrangement will be by debit /credit to their Special Non Resident Rupee Account. Therefore, the transaction should **also** be reported in (LEC FII) by the designated bank of the FII concerned.

6.6 Shares/convertible debentures of Indian companies purchased under Portfolio Investment Scheme by NRIs, OCBs cannot be transferred, by way of sale under private arrangement.

6.7 On receipt of statements from the AD, the Reserve Bank may call for such additional details or give such directions as required from the transferor/transferee or their agents, if need be.

7. General permission does not preclude obtaining RBI approval under other enactments.

Form FC-TRS

**Declaration regarding transfer of shares of by way of sale from resident to non resident/
non-resident to resident**

(to be submitted to the AD branch in quadruplicate)

The following documents are enclosed (See Para 5 of Annex)

For sale of shares by a person resident in India

- (i) Consent Letter duly signed by the seller and buyer or their duly appointed agent and in the latter case the Power of Attorney Document
- (ii) The shareholding pattern of the investee company after the acquisition of shares by a person resident outside India
- (iii) Certificate indicating fair value of shares from a Chartered Accountant.
- (iv) Copy of Broker's note if sale is made on Stock Exchange.
- (v) Undertaking from the buyer to the effect that he is eligible to acquire shares/convertible debentures under FDI policy and the existing sectoral limits and Pricing Guidelines have been complied with.
- (vi) Undertaking from the FII/sub account to the effect that the individual FII/ Sub account ceiling as prescribed by SEBI has not been breached.

Additional documents in respect of sale of shares by a person resident outside India

- (vii) If the sellers are NRIs/OCBs, the copies of RBI approvals evidencing the shares held by them on repatriation/non-repatriation basis.
- (viii) No Objection/Tax Clearance Certificate from Income Tax Authority/Chartered Account.

1 Name of the company

Address (including e-mail ,telephone Number Fax no)

Activity

NIC Code No.

2 Whether FDI is allowed under Automatic route

Sectoral Cap under FDI Policy

3 Nature of transaction

Transfer from resident to non resident

Transfer from non resident to resident

4 Name of the buyer

Category

(please tick appropriate category)

Individual

Company

FII

Others

In case of Company/FII etc please indicate the constitution of the company i.e. Limited company, registered partnership etc

Date and Place of Incorporation

Address of the buyer (including e-mail ,telephone Number Fax no)

5 Name of the seller

Category

(Please tick appropriate category)

Individual

Company

FII

Others(please specify)

In case of Company/FII etc please indicate the constitution of the company i.e. Limited company, registered partnership etc

	Date and Place of Incorporation				
	Address of the seller (including e-mail ,telephone Number Fax no)				
6	Particulars of earlier Reserve Bank/FIPB approvals				
7	Details regarding shares/convertible debentures to be transferred				
	<i>Date of the transaction</i>	<i>Number of shares</i>	<i>face value</i>	<i>Negotiated Price for the transfer**</i>	<i>Amount of consideration</i>
8	Foreign Investments in the company				
		<i>No of shares</i>	<i>Percentage</i>		
	Before the transfer				
	After the transfer				
9	Where the shares are listed on Stock Exchange				
	<i>If so Name of the Stock exchange</i>				
	<i>Price Quoted on the Stock exchange</i>				
	Where the shares are Unlisted				
	<i>Price as per Valuation guidelines*</i>				
	<i>Price as per Chartered Accountants Valuation report</i>				
*I **	<i>CA Certificate to be attached</i>				
<p>Declaration by the transferor/transferee</p> <p>I/ We hereby declare that :</p> <ul style="list-style-type: none"> (i) The particulars given above are true and correct to the best of my/our knowledge and belief (ii) I/ We was/were holding the shares as per FDI Policy under FERA/ FEMA Regulations on repatriation/non repatriation basis (iii) I/ We are eligible to acquire the shares of the company in terms of the FDI Policy. It is not a transfer relating to shares of a company engaged in financial services sector or a sector where general permission is not available (iv) The Sectoral limit under the FDI Policy and the pricing guidelines have been adhered to <p style="text-align: right;">Signature of the Declarant or his duly authorised agent</p> <p>Date:</p>					
<p>Note</p> <p><i>In respect of the transfer of shares from resident to non resident the declaration has to be signed by the non resident buyer and</i></p> <p><i>In respect of the transfer of shares from non resident to resident the declaration has to be signed by the non resident seller</i></p>					

Certificate by the AD Branch

It is certified that the application is complete in all respects

The receipt /payment for the transaction is in accordance FEMA Regulations/ Reserve Bank guidelines

Signature

Name and Designation of the Officer

Date:

Name of the AD Branch

AD Branch Code

Proforma

Statement of inflows/outflow on account of remittance received/made in connection with transfer of shares/convertible debentures, by way of sale

Category-wise:

Part A - NRI/erstwhile OCB

Part B - Foreign National/non-resident incorporated entity

Part C - Foreign Institutional Investors

Inflow - Transfer from resident to non-resident

Date of transaction	Name of the company	Activity	NIC Code	Name of the buyer	Name of the seller	No. of shares transferred	Face value	Sale price per share	Total inflow
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)

Outflow - Transfer from non-resident to resident

Date of transaction	Name of the company	Activity	NIC Code	Name of the seller	Name of the buyer	No. of shares transferred	Face value	Sale price per share	Total outflow
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)