

RBI/2011-12/247 A.P. (DIR Series) Circular No. 43

November 04, 2011

Foreign Direct Investment - Transfer of Shares

Attention of Authorized Dealers Category-I (AD Category-I) banks is invited to Regulations 9 and 10 of the Foreign Exchange Management (Transfer of 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.

Accordingly, the transfer of shares from a Resident to a Non Resident where i) the transfer does not conform to the pricing guidelines as stipulated by the Reserve Bank from time to time; or ii) the transfer of shares requires the prior approval of the FIPB as per the extant Foreign Direct Investment (FDI) policy; or iii) the Indian company whose shares are being transferred is engaged in rendering any financial service; or iv) the transfer falls under the purview of the provisions of SEBI (SAST) Regulations, require the prior approval of the Reserve Bank of India.

Further, transfer of shares from a Non Resident to a Resident which does not conform to the pricing guidelines as stipulated by the Reserve Bank of India from time to time also requires the prior approval of the Reserve Bank of India.

2. As a measure to further liberalize and rationalize the procedures and policies governing FDI in India, it has now been decided to allow the following without the prior approval of the Reserve Bank of India :

A. Transfer of shares from a Non Resident to Resident under the FDI scheme where the pricing guidelines under FEMA, 1999 are not met provided that :-

The original and resultant investment are in line with the extant FDI policy and FEMA regulations in terms of sectoral caps, conditionalities (such as minimum capitalization, etc.), reporting requirements, documentation, etc.;

The pricing for the transaction is compliant with the specific/explicit, extant and relevant SEBI regulations / guidelines (such as IPO, Book building, block deals, delisting, exit, open offer/ substantial acquisition / SEBI SAST, buy back); and

Chartered Accountants Certificate to the effect that compliance with the relevant SEBI regulations / guidelines as indicated above is attached to the form FC-TRS to be filed with the AD bank.

B. Transfer of shares from Resident to Non Resident :

i) where the transfer of shares requires the prior approval of the FIPB as per the extant FDI policy provided that :

a) the requisite approval of the FIPB has been obtained; and

b) the transfer of share adheres with the pricing guidelines and documentation requirements as specified by the Reserve Bank of India from time to time.

ii) where SEBI (SAST) guidelines are attracted subject to the adherence with the pricing guidelines and documentation requirements as specified by Reserve Bank of India from time to time.

iii) where the pricing guidelines under the Foreign Exchange Management Act (FEMA), 1999 are not met provided that:-

a) The resultant FDI is in compliance with the extant FDI policy and FEMA regulations in terms of sectoral caps, conditionalities (such as minimum capitalization, etc.), reporting requirements, documentation etc.;

b) The pricing for the transaction is compliant with the specific/explicit, extant and relevant SEBI regulations / guidelines (such as IPO, Book building, block deals, delisting, exit, open offer/ substantial acquisition / SEBI SAST); and

c) Chartered Accountants Certificate to the effect that compliance with the relevant SEBI regulations / guidelines as indicated above is attached to the form FC-TRS to be filed with the AD bank.

iv) where the investee company is in the financial sector provided that :

a) NOCs are obtained from the respective financial sector regulators/ regulators of the investee company as well as transferor and transferee entities and such NOCs are filed along with the form FC-TRS with the AD bank; and

b). The FDI policy and FEMA regulations in terms of sectoral caps, conditionalities (such as minimum capitalization, etc.), reporting requirements, documentation etc., are complied with.

3. Necessary amendments to the Foreign Exchange Management (Transfer of Issue of Security by a Person Resident outside India) Regulations, 2000 notified vide Notification No. FEMA 20/2000-RB dated May 3, 2000 are being notified separately.

4. AD Category - I banks may bring the contents of the circular to the notice of their constituents.

5. 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.

(Meena Hemachandra)
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