



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

RBI/2013-2014/436

A.P. (DIR Series) Circular No. 86

January 9, 2014

All Category - I Authorised Dealer banks

Madam/Sir,

**Foreign Direct Investment- Pricing Guidelines for FDI instruments with
optionality clauses**

Attention of Authorised Dealers 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. In terms of the extant instructions, only equity shares or preference shares/debentures are eligible to be issued to persons resident outside India under the Foreign Direct Investment Scheme in terms of Regulation 5 (1) of Foreign Exchange Management (Transfer and Issue of shares by a Person Resident outside India) Regulations, 2000 notified vide Notification No. FEMA 20/2000-RB dated May 3, 2000.

2. On a review, it has now been decided that optionality clauses may henceforth be 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. The optionality clause will oblige the buy-back of securities from the investor at the price prevailing/value determined at the time of exercise of the optionality so as to enable the investor to exit without any assured return. The provision of optionality clause shall be subject to the following conditions:

- (a) There is a minimum lock-in period of one year or a minimum lock-in period as prescribed under FDI Regulations, whichever is higher (e.g. defence and construction development sector where the lock-in period of three years has been prescribed). The lock-in period shall be effective from the date of allotment of such shares or convertible debentures or as prescribed for defence and construction development sectors, etc. in Annex B to Schedule 1 of Notification No. FEMA. 20 as amended from time to time;
- (b) After the lock-in period, as applicable above, the non-resident investor exercising option/right shall be eligible to exit without any assured return, as under:

- (i) In case of a listed company, the non-resident investor shall be eligible to exit at the market price prevailing at the recognised stock exchanges;
- (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.
Note: For the above purpose, RoE shall mean Profit After Tax / Net Worth; Net Worth would include all free reserves and paid up capital.
- (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.

3. Reserve Bank has since amended the Regulations and the changes have been notified vide [Notification No. FEMA. 294/2013-RB dated November 12, 2013](#) vide G.S.R. No. 805(E) dated December 30, 2013.

4. All existing contracts will have to comply with the above conditions to qualify as FDI compliant.

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

6. 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,

(Rudra Narayan Kar)
Chief General Manager In-Charge