Credit Information Review

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Guidelines

Infrastructure Financing

In view of the critical importance of the infrastructure sector and high priority being given to development of various infrastructure services, the Reserve Bank of India, has in consultation with the Government of India, reviewed the guidelines on infrastructure financing by banks. The revised guidelines on financing of infrastructure projects by banks and all India financial institutions (FIs) are:

Definition

Any credit facility provided by banks, FIs or non-banking financial companies (NBFCs) to a borrower company engaged in developing or operating and maintaining or developing, operating and maintaining any infrastructure facility will fall within the definition of infrastructure lending. Such facility could be a project in any of the following sectors:

(a) a road, including toll road, a bridge or a rail system;

(b) a highway project including other activities being an integral part of the highway project;

(c) a port, airport, inland waterway or inland port;

(d) a water supply project, irrigation project, water treatment system, sanitation and sewerage system or solid waste management system;

(e) telecommunication services whether basic or cellular, including radio paging, domestic satellite service (i.e., a satellite owned and operated by an Indian company for providing telecommunication service), network of trunking, broadband network and internet services;

(f) an industrial park or special economic zone ;

(g) generation or generation and distribution of power;

(h) transmission or distribution of power by laying a network of new transmission or distribution lines;

(i) any other infrastructure facility of similar nature.

Criteria

Banks/FIs are free to finance technically feasible, financially viable and bankable projects undertaken by both public sector and private sector undertakings subject to the following conditions:

(a) The amount sanctioned should be within the overall ceiling of the prudential exposure norms prescribed by the Reserve Bank for infrastructure financing.

(b) Banks/FIs should have the requisite expertise for appraising technical feasibility, financial viability and bankability of projects, with particular reference to the risk analysis and sensitivity analysis.

(c) In respect of projects undertaken by public sector units, term loans may be sanctioned only

for corporate entities (i.e. public sector undertakings registered under Companies Act or a corporation established under a relevant statute). Further, such term loans should not be in lieu of or to substitute budgetary resources envisaged for the project. The term loan could supplement the budgetary resources if such supplementing was contemplated in the project design. While such public sector units may include Special Purpose Vehicles (SPVs) registered under the Companies Act set up for financing infrastructure projects, banks and FIs should ensure that these loans/ investments are not used for financing the budget of the State governments. Whether such financing is done by way of extending loans or investing in bonds, banks and financial institutions should undertake due diligence on the viability and bankability of such projects to ensure that revenue stream from the project is sufficient to take care of the debt servicing obligations and that the repayment/servicing of debt is not out of budgetary resources. Further, in the case of financing SPVs, banks and financial institutions should ensure that the funding proposals are for specific monitorable projects .

(d) Banks may also lend to SPVs in the private sector, registered under Companies Act for directly undertaking infrastructure projects which are financially viable and not for acting as mere financial intermediaries. Banks may ensure that the bankruptcy or financial difficulties of the parent/sponsor should not affect the financial health of the SPV.

Types of Financing

In order to meet financial requirements of infrastructure projects, banks may extend credit facility by way of working capital finance, term loan, project loan, subscription to bonds and debentures/ preference shares/equity shares acquired as a part of the project finance package which is treated as deemed advance and any other form of funded or non-funded facility.

Take-out Financing

Banks may enter into take-out financing arrangement with Infrastructure Development Finance Corporation (IDFC)/other financial institutions (FIs) or avail of liquidity support from them. Banks may also be guided by the instructions regarding take-out finance.

Inter-institutional Guarantees

In terms of the existing instructions, banks are precluded from issuing guarantees favouring other banks/lending institutions for the loans extended by the latter, as the primary lender is expected to assume the credit risk and not pass it on by securing itself with a guarantee. In other words separation of credit risk and funding is not allowed. These instructions are presently not applicable to FIs. While the Reserve Bank is not in favour of a general relaxation in this regard, keeping in view the special features of lending to infrastructure projects, viz., high degree of appraisal skills required on the part of lenders and availability of resources of a maturity matching with the project period, banks have been permitted to issue guarantees favouring other lending institutions in respect of infrastructure projects. The bank issuing the guarantee, however, have to take a funded share in the project at least to the extent of 5 per cent of the project cost and would also have to undertake normal credit appraisal, monitoring and follow up of the project.

Financing Promoter's Equity

Earlier, banks were advised that the promoter's contribution towards the equity capital of a company should come from his own resources and the bank should not normally grant advances to take up shares of other companies. In view of the importance attached to infrastructure sector, it has been decided that, under certain circumstances, an exception may be made to this policy for financing the acquisition of promoter's shares in an existing company, which is engaged in implementing or operating an infrastructure project in India. The conditions, subject to which an

exception may be made are:

(a) Bank finance would be only for acquisition of shares of existing companies providing infrastructure facilities. Further, acquisition of such shares should be in respect of companies where the existing foreign promoters (and/or domestic joint promoters) voluntarily propose to disinvest their majority shares in compliance with Securities and Exchange Board of India (SEBI) guidelines, where applicable.

(b) The companies to which loans are extended should, among other things, have a satisfactory net worth.

(c) The company financed and the promoters/directors of such companies should not be defaulters to banks/FIs.

(d) In order to ensure that the borrower has a substantial stake in the infrastructure company, bank finance should be restricted to 50 per cent of the finance required for acquiring the promoter's stake in the company being acquired.

(e) Finance extended should be against the security of assets of the borrowing company or the assets of the company acquired and not against the shares of that company or the company being acquired. The shares of borrower company/company being acquired may be accepted as additional security and not as primary security. The security charged to the banks should be marketable.

(f) Banks should ensure maintenance of stipulated margin at all times.

(g) The tenor of the bank loans may not be longer than seven years.

However, the boards of banks can make an exception in specific cases, where necessary, for financial viability of the project.

(h) This financing would be subject to compliance with the statutory requirements under Section 19 (2) of the Banking Regulation Act, 1949.

(i) The banks financing acquisition of equity shares by promoters should be within the regulatory ceiling of 5 per cent on capital market exposure in relation to its total outstanding advances (including commercial paper) as on March 31 of the previous year.

(j) The proposal for bank finance should have the approval of the bank's board.

Appraisal

(i) In respect of financing of infrastructure projects undertaken by Government owned entities, banks/financial institutions should undertake due diligence on the viability of the projects. Banks should ensure that the individual components of financing and returns on the project are well defined and assessed. State government guarantees may not be taken as a substitute for satisfactory credit appraisal and such appraisal requirements should not be diluted on the basis of any reported arrangement with the Reserve Bank of India or any bank for regular standing instructions/periodic payment instructions for servicing the loans/ bonds.

(ii) Infrastructure projects are often financed through Special Purpose Vehicles. Financing of these projects call for special appraisal skills on the part of lending agencies. Banks/FIs may consider constituting appropriate screening committees/special cells for appraisal of credit proposals and monitoring the progress/performance of the projects. Often, the size of the funding requirement would necessitate financing by more than one bank under consortium or syndication arrangements. In such cases, participating banks/FIs may, for the purpose of their own assessment, refer to the appraisal report prepared by the lead bank/FI or have the project jointly appraised.

Prudential Requirements

Exposure Limits

Credit exposure to borrowers belonging to a group may exceed the exposure norm of 40 per cent of the bank's capital funds by an additional 10 per cent (i.e., up to 50 per cent), provided the additional credit exposure is on account of extension of credit to infrastructure projects. Credit exposure to single borrower may exceed the exposure norm of 15 per cent of the bank's capital funds by an additional 5 per cent (i.e., up to 20 per cent) provided the additional credit exposure is on account of infrastructure.

Assignment of Risk Weight for Securitised Paper

Banks may assign a concessional risk weight of 50 per cent for capital adequacy purposes on investment in securitised paper pertaining to an infrastructure facility subject to compliance with the following:

(a) Infrastructure facility should satisfy the conditions stipulated in paragraph 1 above.

(b) The infrastructure facility should be generating income/cash flows which would ensure servicing/repayment of the securitised paper.

(c) The securitised paper should be rated at least 'AAA' by the rating agencies and the rating should be current and valid.

(i) The rating is not more than one month old on the date of opening of the issue, and the rating rationale from the rating agency is not more than one year old on the date of opening of the issue and the rating letter and the rating rationale is a part of the offer document.

(ii) In the case of secondary market acquisition, the 'AAA' rating of the issue should be in force and confirmed from the monthly bulletin published by the respective rating agency.

(iii) Securitised paper should be a performing asset on the books of the investing/lending institution.

Asset - Liability Management

The long - term financing of infrastructure projects may lead to asset – liability mismatches, particularly when such financing is not in conformity with the maturity profile of a bank's liabilities. Banks would, therefore, need to exercise due vigil on their asset-liability position to ensure that they do not run into liquidity mismatches on account of lending to such projects.

Administrative Arrangements

Timely and adequate availability of credit is the pre-requisite for successful implementation of infrastructure projects. Banks/FIs should, therefore, clearly delineate the procedure for approval of loan proposals and institute a suitable monitoring mechanism for reviewing applications pending beyond the specified period. Multiplicity of appraisals by every institution involved in financing, leading to delays, has to be avoided and banks should be prepared to broadly accept technical parameters laid down by leading public financial institutions. Also, setting up a mechanism for an ongoing monitoring of the project implementation will ensure that the credit disbursed is utilised for the purpose for which it was sanctioned.

Take-out Financing/Liquidity Support

Take-out Financing Arrangement

Take-out financing structure is essentially a mechanism designed to enable banks to avoid asset-liability maturity mismatches that may arise out of extending long tenor loans to infrastructure projects. Under the arrangements, banks financing the infrastructure projects will have an arrangement with IDFC or any other financial institution for transferring to the latter the outstandings in their books on a predetermined basis. IDFC and SBI have devised different take-

out financing structures to suit the requirements of various banks, addressing issues, such as, liquidity, asset-liability mismatches, limited availability of project appraisal skills, etc. They have also developed a Model Agreement that can be considered for use as a document for specific projects in conjunction with other project loan documents. The agreement between SBI and IDFC could provide a reference point for other banks to enter into somewhat similar arrangements with IDFC or other financial institutions.

Liquidity Support from IDFC

As an alternative to take-out financing structure, IDFC and SBI have devised a product, providing liquidity support to banks. Under the scheme, IDFC would commit, at the point of sanction, to refinance the entire outstanding loan (principal+unrecovered interest) or part of the loan, to the bank after an agreed period, say, of five years. Credit risk on the project will be taken by the bank concerned and not by IDFC. The bank would repay the amount to IDFC with interest as per the terms agreed upon. Since IDFC would be taking a credit risk on the bank, the interest rate to be charged by it on the amount refinanced would depend on the IDFC's risk perception of the bank (in most of the cases, it may be close to IDFC's PLR). The refinance support from IDFC would particularly benefit the banks, which have the requisite appraisal skills and the initial liquidity to fund the project.

Regional Rural Banks (RRBs) and Local Area Banks (LABs) are excluded from the purview of financing of infrastructure projects.

Compromise Settlement of Chronic NPAs

To give one more opportunity to the borrowers to come forward for settlement of their outstanding dues, the Reserve Bank of India has advised all public sector banks to uniformly implement the fresh guidelines for compromise settlement of chronic non-performing assets (NPA). The guidelines have been issued in consultation with the Government of India. The fresh guidelines provide a simplified, non-discretionary and non-discriminatory mechanism for compromise settlement of chronic Non-Performing Assets (NPAs) below the prescribed value ceiling of Rs.10 crore. All public sector banks have been asked to ensure that maximum dues are realised of dues is achieved from the stock of NPAs within the stipulated time. A review of compromise settlements of NPAs through the earlier scheme had revealed that the progress of recovery of NPAs was moderate. Revised guidelines will cover NPAs below the prescribed ceiling of Rs. 10 crore relating to all sectors including the small sector. The guidelines will not, however, cover cases of wilful default, fraud and malfeasance. The modified guidelines for compromise settlement of dues relating to NPAs of public sector banks in all sectors are:

Chronic NPAs up to Rs. 10 crore

Coverage

(a) Revised guidelines will cover all NPAs in all sectors irrespective of the nature of business, which have become doubtful or loss as on March 31, 2000, with outstanding balance of Rs. 10 crore and below on the cut off date.

(b) The guidelines will also cover NPAs classified as sub-standard as on March 31, 2000, which have subsequently become doubtful or loss.

(c) These guidelines will cover cases in which the banks have initiated action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and also cases pending before courts/Debt Recovery Tribunals (DRTs)/Board for Industrial Finance and Re-construction (BIFR), subject to consent decree being obtained from the

Courts/DRTs/ BIFR.

(d) Cases of wilful default, fraud and malfeasance will not be covered.

(e) The last date for receipt of applications from borrowers would be as at the close of business on April 30, 2003. The processing under the revised guidelines should be completed by October 31, 2003.

Settlement Amount and Cut off Date

(i) Doubtful or Loss assets as on March 31, 2000: The minimum amount that should be recovered under the revised guidelines in respect of compromise settlement of NPAs classified as doubtful or loss as on March 31, 2000 would be 100 per cent of the outstanding balance in the account as on the date of transfer to the protested bills account or the amount outstanding as on the date on which the account was categorised as doubtful NPAs, whichever happened earlier, as the case may be.

(ii) Sub-standard as on March 31, 2000 but doubtful or loss later: The minimum amount that should be recovered in respect of NPAs classified as sub-standard as on March 31, 2000 which became doubtful or loss subsequently would be 100 per cent of the outstanding balance in the account as on the date of transfer to the protested bills account or the amount as on the date on which the account was categorised as doubtful NPAs, whichever happened earlier, as the case may be, plus interest at existing Prime Lending Rate (PLR) from April 1, 2000 till the date of final payment.

(iii) Payment : The amount of settlement arrived at in both the above cases, should preferably be paid in one lump sum. In cases where the borrowers are unable to pay the entire amount in one lump sum, at least 25 per cent of the amount of settlement should be paid upfront and the balance amount of 75 per cent should be recovered in instalments within a period of one year together with interest at the existing PLR from the date of settlement up to the date of final payment.

(iv) Sanctioning Authority : The decision on the compromise settlement and consequent sanction of waiver or remission or write-off should be taken by the competent authority under the delegated powers.

(v) Non-discretionary Treatment : The banks should follow the above guidelines for compromise settlement of all NPAs covered under the revised scheme, without discrimination and a monthly report on the progress and details of settlements should be submitted by the concerned authority to the next higher authority and their central office. Banks should go for wide publicity and also give notice by February 28, 2003 to the eligible defaulting borrowers to avail of the opportunity for one time settlement of their outstanding dues in terms of these guidelines.

(vi) Reporting : The banks should submit a report on the progress in the compromise settlement of chronic NPAs under the revised guidelines every quarter to the board of directors. A copy of the quarterly progress report should also be sent to the Reserve Bank.

Chronic NPAs over Rs. 10 crore

Chairman and Managing Directors should personally supervise the compromise settlement of chronic NPAs on case to case basis and the board of directors may evolve policy guidelines regarding one time settlement of NPAs not covered under these instructions as a part of their loan recovery policy. Any deviation from these settlement guidelines for any borrower should be made only by the board of directors.

Exchange Control

Disinvestment Proceeds of Sponsored ADRs/GDRs

To encourage Indian companies to list American Depository Receipts (ADRs)/Global Depository Receipts (GDRs) on the overseas exchanges through the scheme of sponsored ADRs/GDRs, it has been decided to permit resident shareholders of Indian companies to receive the sale proceeds in foreign currency. This is a measure of further liberalisation. This facility would be extended until further notice to such companies, who offer their shares for conversion to ADRs/GDRs. However, the conversion to such ADRs/ GDRs should have the approval of Foreign Investment Promotion Board (FIPB). Further, the sale proceeds, so received by residents, are also permitted to be credited to their Exchange Earners' Foreign Currency (EEFC)/Resident Foreign Currency (Domestic) [RFC(D)] accounts or to their Rupee accounts in India at their option.

Disinvestment proceeds under the scheme, receivable by residents, who have since become non-residents, would also be eligible for credit to their foreign currency accounts abroad or any of their accounts in India at their option.

Earlier Indian companies were permitted to sponsor an issue of ADRs/GDRs with an overseas depository against the shares held by its shareholders subject to compliance with the rules on the subject.

Further Liberalisation in Use of International Credit Cards

The Reserve Bank of India's prior permission is no longer required for availing of foreign exchange exceeding US$10,000 per calendar year for private travel and US$25,000 for business travel and also travel related to international conference/training/medical treatment, if the expenses are incurred through international credit cards. This facility is available to all residents, subject to their credit limit as may be fixed by the card issuer. Residents, individuals, as well as corporates, can avail of international credit card facility from any of the card issuers in India. The issuers according to their credit perception fix the credit limit available against such cards.

It is, however, clarified that there is no separate ceiling prescribed by the Reserve Bank under Foreign Exchange Management Act (FEMA), on expenditure incurred through use of credit cards outside or within India.

In addition to travel related expenditure abroad, international credit cards can also be used on internet for any purpose for which exchange can be purchased from an authorised dealer in India, such as, for import of books, purchase of downloadable softwares or import of any other item permissible under the EXIM Policy. There is also no aggregate monetary ceiling separately prescribed for use of international credit cards through internet.

It is, however, clarified that international credit cards cannot be used on internet or otherwise for purchase of prohibited items, like lottery tickets, banned or proscribed magazines, participation in sweepstakes, payment for call-back services, etc., since no drawal of foreign exchange is permitted for such items/activities.

Branch Banking

Conflict Diamonds

The Reserve Bank of India, as per new United Nations (UN) mandated Kimberley Process Certification Scheme (KPCS) which has been adopted, among others, by India, has advised all commercial banks to ensure that no rough diamonds mined and illegally traded enter the country. Various measures have been taken in this regard including a system of import into India of diamonds being mandatorily accompanied by Kimberley Process Certificate (KPC). Similarly, exports from India would also be accompanied by the KPC to the effect that no conflict/rough diamonds have been used in the process. These KPCs would be verified/validated in the case of

imports/exports by the Gem and Jewellery Export Promotion Council, which has been designated, under the KPCS, as importing-exporting authority by the Government of India. The banks should, therefore, obtain a modified undertaking as per a prescribed format from all the clients who are being extended credit for doing any business relating to diamonds to ensure that the client complies with the KPCS guidelines. The banks should continue to promptly report to the Reserve Bank of any violation of the UN Resolutions as and when noticed.

Export Credit in Foreign Currency

To provide further flexibility to banks to source foreign currency funds for granting Pre-shipment Credit in Foreign Currency (PCFC)/ Export Bills Abroad (EBR) to exporters, the Reserve Bank has decided to permit banks to use borrowed foreign currency funds. They can also use foreign currency funds generated through buy-sell swaps in the domestic forex market for granting such loans, subject to adherence to approved Aggregate Gap Limit.

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