

Foreign Exchange Developments

1. Clarification – Establishment of Branch Offices (BO)/Liaison Offices (LO) in India by Foreign Entities – Delegation of Powers

In the A.P. (DIR Series) Circular No.24 dated December 30, 2009, powers as regards the transfer of assets of LO/BO to others were not been delegated. It was, therefore, clarified that transfer of assets of Liaison/Branch Office to subsidiaries or other LO/BO or any other entity is permitted only with the specific approval of the Central Office of the Foreign Exchange Department, Reserve Bank of India. All the other instructions shall remain unchanged.

[A.P. (DIR Series) Circular No. 88 dated March 1, 2012]

2. Foreign Institutional Investor (FII) investment in 'to be listed' debt securities

SEBI has, vide their circular CIR/IMD/FIIC/18/2010 dated November 26, 2010, issued instructions on the revised allocation of investment limits to FIIs. In terms of paragraph 8 of the circular, SEBI has allowed FIIs to invest in 'to be listed' debt securities. Accordingly, it has been decided that SEBI registered FIIs/sub-accounts of FIIs can now invest in primary issues of Non-Convertible Debentures (NCDs)/bonds only if listing of such bonds/NCDs is committed to be done within 15 days of such investment. In case the NCDs/bonds issued to the SEBI registered FIIs/sub-accounts of FIIs are not listed within 15 days of issuance to the SEBI registered FIIs/sub-accounts of FIIs, for any reason, then the FII/sub-account of FII shall immediately dispose of these bonds/NCDs either by way of sale to a third party or to the issuer and the terms of offer to FIIs/sub-accounts should contain a clause that the issuer of such debt securities shall immediately redeem/buyback the said securities from the FIIs/sub-accounts of FIIs in such an eventuality.

[A.P. (DIR Series) Circular No. 89 dated March 1, 2012]

3. Clarification – Liberalised Remittance Scheme for Resident Individuals

The following is clarified in respect of the Liberalised Remittance Scheme (LRS):

The LRS facility is available to all resident individuals including minors. In case of remitter being a minor, the LRS declaration form should be countersigned by the minor's natural guardian. Accordingly, the revised LRS application cum declaration form is enclosed with the circular;

Remittances under the facility can be consolidated in respect of family members subject to individual family members complying with the terms and conditions of the scheme; and

Remittances under the scheme can be used for purchasing objects of art subject to the provisions of other applicable laws such as the extant Foreign Trade Policy of the Government of India.

[A.P. (DIR Series) Circular No. 90 dated March 6, 2012]

4. Deferred Payment Protocols dated April 30, 1981 and December 23, 1985 between Government of India and erstwhile USSR

A further revision has taken place on February 6, 2012 and accordingly, the Rupee value of the Special Currency Basket has been fixed at Rs.68.838139 with effect from February 9, 2012.

[A.P. (DIR Series) Circular No. 91 dated March 13, 2012]

5. Opening of Diamond Dollar Accounts (DDAs) – Change in periodicity of the reporting

With a view to further rationalising the reporting mechanism, it has now been decided that AD Category-I banks should submit **quarterly reports instead of monthly reports** to the Chief General Manager-in-Charge, Foreign Exchange Department, Reserve Bank

of India, Trade Division, Amar Building, Mumbai – 400 001, giving details of the name and address of the firm/company in whose name the Diamond Dollar Account is opened, along with the date of opening/closing the Diamond Dollar Account with effect from the quarter ended March 2012, by the 10th of the month following the quarter to which it relates.

[A.P. (DIR Series) Circular No. 92
dated March 13, 2012]

6. Investment in Indian Venture Capital Undertakings and/or domestic Venture Capital Funds by SEBI registered Foreign Venture Capital Investors

It has now been decided, to allow FVCIs to invest in the eligible securities (equity, equity linked instruments, debt, debt instruments, debentures of an IVCU or VCF, units of schemes/funds set up by a VCF) by way of private arrangement/purchase from a third party also, subject to terms and conditions as stipulated in Schedule 6 of Notification No. FEMA 20/2000 -RB dated May 3, 2000 as amended from time to time. It is also being clarified that SEBI registered FVCIs would also be allowed to invest in securities on a recognised stock exchange subject to the provisions of the SEBI (FVCI) Regulations, 2000, as amended from time to time, as well as the terms and conditions stipulated therein.

[A.P. (DIR Series) Circular No. 93
dated March 19, 2012]

7. Clarification – Prior intimation to the Reserve Bank of India for raising the aggregate Foreign Institutional Investors/Non-Resident Indian limits for investments under the Portfolio Investment Scheme

It is hereby clarified that the Indian company raising the aggregate FII investment limit of 24 per cent to the sectoral cap/statutory limit, as applicable to the respective Indian company or raising the aggregate NRI investment limit of 10 per cent to 24 per cent, should necessarily intimate the same to the Reserve Bank of India, immediately, as hitherto, along with a Certificate

from the Company Secretary stating that all the relevant provisions of the extant Foreign Exchange Management Act, 1999 regulations and the Foreign Direct Policy, as amended from time to time, have been complied with.

It may also be noted that the Reserve Bank of India monitors the ceilings on FII/NRI/PIO investments in Indian companies on a daily basis. For effective monitoring of foreign investment ceiling limits, the Reserve Bank has fixed cut-off points that are two percentage points lower than the actual ceilings. Once the aggregate net purchases of equity shares of the company by FIIs/NRIs/PIOs reaches the cut-off point of 2 per cent below the overall limit, the Reserve Bank cautions all the designated bank branches not to purchase any more equity shares of the respective company on behalf of any FIIs/NRIs/PIOs without prior approval of the Reserve Bank. The link offices are then required to intimate the Reserve Bank about the total number and value of equity shares/convertible debentures of the company proposed to be bought on behalf of their FIIs/NRIs/PIOs clients. On receipt of such proposals, the Reserve Bank gives clearances on a first-come-first served basis till such investments in companies reaches the respective limits (such as, 10/24/30/40/49 per cent limit or the sectoral caps/statutory ceilings), as applicable. On reaching the aggregate ceiling limit, the Reserve Bank advises all designated bank branches to stop purchases on behalf of their FIIs/NRIs/PIOs clients. The Reserve Bank also informs the general public about the 'caution' and the 'stop purchase' in these companies through a press release and an updated list regarding the same is placed on the RBI website (www.rbi.org.in).

[A.P. (DIR Series) Circular No. 94
dated March 19, 2012]

8. Foreign Exchange Management (Deposit) Regulations, 2000 – Credit to Non Resident (External) Rupee/Foreign Currency Non-Resident (Bank) Account

In terms of Notification No. FEMA 3/2000-RB dated May 3, 2000, as amended from time to time, an individual resident in India may borrow a sum not exceeding US\$ 250,000/- or its equivalent from her/his

close relatives outside India, subject to the conditions mentioned therein.

The Reserve Bank has received representations that the repayment of such loans may be allowed to be credited to the Non Resident (External) Rupee (NRE) Accounts. On review, it has been decided that AD Category-I banks may allow repayment of such loans to NRE/Foreign Currency Non-Resident (Bank) [FCNR(B)] account of the lender concerned subject to the condition that the loan to the resident individual was extended by way of inward remittance in foreign exchange through normal banking channels or by debit to the NRE/FCNR(B) account of the lender and the lender is eligible to open NRE/FCNR(B) account within meaning of the Foreign Exchange Management (Deposit) Regulations, 2000 notified vide Notification No. FEMA 5/2000-RB dated May 3, 2000, as amended from time to time. Such credit shall be treated as an eligible credit to the NRE/FCNR(B) account in terms of Para 3(j) of Schedule-1 read with Para 5 of Schedule-2 of Notification No. FEMA 5/2000-RB, *ibid*.

[A.P. (DIR Series) Circular No. 95 dated March 21, 2012]

9. Overseas Direct Investments by Indian Party – Rationalisation

To grant more flexibility to the Indian party, it has been decided to further liberalise various provisions/regulations of the Notification as detailed under.

Creation of charge on immovable/movable property and other financial assets

It has been decided that proposals from the Indian party for creation of charge in the form of pledge/mortgage/hypothecation on the immovable/movable property and other financial assets of the Indian Party and their group companies may be considered by the Reserve Bank under the approval route within the overall limit fixed (presently 400 per cent) for financial commitment subject to submission of a 'No Objection' by the Indian Party and their Group companies from their Indian lenders. Appropriate reporting mechanism for capturing the financial commitment on account of creation of charge on such property/assets shall be introduced shortly.

Reckoning bank guarantee issued on behalf of JV/WOS for computation of Financial Commitment

It has been decided that the bank guarantee issued by a resident bank on behalf of an overseas JV/WOS of the Indian party, which is backed by a counter guarantee/collateral by the Indian party, shall be reckoned for computation of the financial commitment of the Indian Party and reported accordingly. Appropriate reporting mechanism for capturing the financial commitment on account of issuance of bank guarantee shall be introduced shortly.

Issuance of personal guarantee by the direct/indirect individual promoters of the Indian Party

It has been decided that issuance of personal guarantee by the promoters of the Indian Party as presently allowed under the General Permission shall also be extended to the indirect resident individual promoters of the Indian Party with same stipulations as in the case of personal guarantee by the direct promoters.

Financial Commitment without equity contribution to JV/WOS

Keeping in view the business requirement of the Indian party, particularly the legal requirement of the host country, it has now been decided that the proposals from the Indian party for undertaking financial commitment without equity contribution in JV/WOS may be considered by the Reserve Bank under the approval route. AD banks may forward the proposals from their constituents after ensuring that the laws of the host country permit incorporation of a company without equity participation by the Indian party.

Submission of Annual Performance Report

Where the law of the host country does not mandatorily require auditing of the books of accounts of JV/WOS, the Annual Performance Report (APR) may be submitted by the Indian party based on the un-audited annual accounts of the JV/WOS provided:

- a. The Statutory Auditors of the Indian party certifies that 'The un-audited annual accounts of the JV/

WOS reflect the true and fair picture of the affairs of the JV/WOS' and

- b. That the un-audited annual accounts of the JV/WOS has been adopted and ratified by the Board of the Indian party.

Compulsorily Convertible Preference Shares (CCPS)

Keeping in view the nature of the Compulsorily Convertible Preference Shares (CCPS), it has been decided that Compulsorily Convertible Preference Shares shall be treated at par with equity shares and the Indian party is allowed to undertake financial commitment based on the exposure to JV by way of CCPS.

[A.P. (DIR Series) Circular No. 96 dated March 28, 2012]

10. Overseas Investments by Resident Individuals – Liberalisation / Rationalisation

Reserve Bank of India has reviewed the facilities available to the resident individuals for acquiring equity shares of a foreign entity by way of/under (i) qualification shares, (ii) professional services rendered and (iii) ESOP scheme. Further, the Committee to Review the Facilities for Individuals under the Foreign Exchange Management Act, 1999 (Chairperson Smt K J Udeshi) in its report submitted in August 2011 suggested that general permission may be made available to the resident individuals for acquiring equity shares of a foreign entity as above. Accordingly, it has been decided to grant general permission to resident individuals in respect of the following.

Acquiring qualification shares of an overseas company for holding the post of a Director

In terms of Regulation 24(1)(a) of the Notification *ibid*, a person resident in India being an individual may acquire foreign securities as qualification shares issued by a company incorporated outside India for holding the post of a Director in the company provided that:

- i. the number of shares so acquired shall be the minimum required to be held for holding the post of director and in any case shall not exceed 1 (one)

per cent of the paid-up capital of the company, and

- ii. the consideration for acquisition of such shares does not exceed the ceiling as stipulated by RBI from time to time.

Since the necessity of having certain qualification shares by an individual to be appointed as a Director of the company is governed by the law of the host country, it has been decided to remove the existing cap of 1 (one) per cent on the ceiling for resident individuals to acquire qualification shares for holding the post of a Director in the overseas company. Accordingly, henceforth, remittance shall be allowed from resident individuals for acquiring the qualification shares for holding the post of a Director in the overseas company to the extent prescribed as per the law of the host country where the company is located. The limit of remittance for acquiring such qualification shares shall be within the overall ceiling prescribed for the resident individuals under the Liberalised Remittance Scheme (LRS) in force at the time of acquisition.

Acquiring shares of a foreign company towards professional services rendered or in lieu of Director's remuneration

It has been decided to grant General Permission to the resident individuals to acquire shares of a foreign entity in part/full consideration of professional services rendered to the foreign company or in lieu of Director's remuneration. The limit of acquiring such shares in terms of value shall be within the overall ceiling prescribed for the resident individuals under the Liberalised Remittance Scheme (LRS) in force at the time of acquisition.

Acquiring shares in a foreign company through ESOP Scheme

It has now been decided that resident employees or Directors may be permitted to accept shares offered under an ESOP Scheme globally, on uniform basis, in a foreign company irrespective of the percentage of the direct or indirect equity stake in the Indian company subject to:

- i. the shares under the ESOP Scheme are offered by the issuing company globally on a uniform basis, and

- ii. an Annual Return is submitted by the Indian company to the Reserve Bank through the AD Category – I bank giving details of remittances/beneficiaries, etc.

[A.P. (DIR Series) Circular No. 97
dated March 28, 2012]

11. Discontinuation of Supplying Printed GR forms by Reserve Bank

With the advent of technology and penetration of internet access, the need for printing and supplying of GR forms by Reserve Bank does not exist any more. It has therefore, been decided to discontinue supplying/selling printed GR forms across the counter by Regional Offices of Reserve Bank. Therefore, with effect from **July 1, 2012**, GR forms shall be available only online at Reserve Bank's website www.rbi.org.in at the following link:

'Notification-> FEMA -> Forms -> For Printing of GR Form'

While downloading the GR forms, the exporter may ensure to use 'Legal' size paper *i.e.* 8.5 * 14 inches. Further, both the printer (printing preference) and paper size in the page setup option have to be set to legal size before printing. The GR number will be automatically allotted when the document goes to the print queue.

[A.P. (DIR Series) Circular No. 98
dated March 30, 2012]

12. External Commercial Borrowings (ECB) Policy – Review of all-in-cost ceiling

Considering the developments in the global financial markets and the fact that borrowers were experiencing difficulties in raising ECBs within the existing all-in-cost ceiling, the all-in-cost ceiling for ECBs with average maturity of three and up to five years was enhanced to 6 months Libor + 350 bps with effect from November 23, 2011 and was subject to review on March 31, 2012. On a review, it has been decided to continue with the enhanced all-in-cost ceiling for a further period of six months in respect of ECBs as under:

| Average Maturity Period | All-in-cost over 6 month LIBOR* |
|----------------------------------|---------------------------------|
| Three years and up to five years | 350 bps |
| More than five years | 500 bps |

* for the respective currency of borrowing or applicable benchmark

The all-in-cost ceiling is applicable up to September 30, 2012 and subject to review thereafter. All other aspects of ECB policy remain unchanged.

[A.P. (DIR Series) Circular No. 99
dated March 30, 2012]

13. Trade Credits for Imports into India – Review of all-in-cost ceiling

Considering the developments in the global financial markets and the fact that domestic importers were experiencing difficulties in raising trade credit within the existing all-in-cost ceiling, the all-in-cost ceiling for trade credit was enhanced to 6 months Libor + 350 bps with effect from November 15, 2011 and was subject to review on March 31, 2012. On a review, it has been decided to continue with the enhanced all-in-cost ceiling for Trade Credits for a further period of six months as under:

| Maturity Period | All-in-cost over 6 month LIBOR* |
|---|---------------------------------|
| Upto one year | 350 bps |
| More than one year and upto three years | |

* for the respective currency of credit or applicable benchmark

The all-in-cost ceiling will include arranger fee, upfront fee, management fee, handling/processing charges, out of pocket and legal expenses, if any.

The all-in-cost ceiling is applicable up to September 30, 2012 and subject to review thereafter. All other aspects of Trade Credit policy remain unchanged.

[A.P. (DIR Series) Circular No. 100
dated March 30, 2012]