

## Foreign Exchange Developments

April 2011

### 1. Acquisition of Credit Card/Debit Card Transactions in India by Overseas Banks - Payments for Airline Tickets

Airline companies incorporated outside India are permitted to repatriate the surplus arising from sale of air tickets through their agents in India after payment of the local expenses and applicable taxes in India.

In certain cases where the payment for the tickets are made by the residents using credit /debit card, Card Companies have been providing arrangements to the foreign airlines operating in India to select the country and currency of their choice, in respect of transactions arising from the sale of the air tickets in India in Indian Rupees (INR). In such transactions, the overseas bank as the acquiring bank receives the funds from Card Issuing Company in its Vostro account maintained with an Authorised Dealer bank in India or in its foreign currency account maintained abroad and makes the payment in foreign currency overseas to the foreign airline.

It is clarified that the practice adopted by foreign airlines, as mentioned above, is not in conformity with the extant provisions of the Foreign Exchange Management Act, 1999 and they should discontinue the practice of using overseas banks for settlement of INR transactions on account of sale of air tickets in India, immediately.

[A.P. (DIR Series) Circular No. 48  
dated April 05, 2011]

### 2. Know Your Customer (KYC) norms/Anti-Money Laundering (AML) Standards/Combating the Financing of Terrorism (CFT)/Obligation of Authorised Persons under Prevention of Money Laundering Act, (PMLA), 2002, as Amended by Prevention of Money Laundering (Amendment) Act, 2009- Money Changing Activities

Financial Action Task Force (FATF) Statement dated October 22, 2010, divides the strategic AML/CFT deficient jurisdictions into two groups as under:

- a. Jurisdictions subject to FATF call on its members and other jurisdictions to apply countermeasures to protect the international financial system from the ongoing and substantial money laundering and terrorist financing (ML/FT) risks emanating from the jurisdiction : Iran
- b. Jurisdictions with strategic AML/CFT deficiencies that have not committed to an action plan developed with the FATF to address key deficiencies as of October 2010. The FATF calls on its members to consider the risks arising from the deficiencies associated with each jurisdiction: Democratic People's Republic of Korea (DPRK).

Authorised Persons have been advised to take into account risks arising from the deficiencies in AML/CFT regime of these countries, while entering into business relationships and transactions with persons (including legal persons and other financial institutions) from or in these countries/ jurisdictions.

[A.P. (DIR Series) Circular No. 49  
dated April 06, 2011]

### 3. Know Your Customer (KYC) Norms/Anti-Money Laundering (AML) Standards/Combating the Financing of Terrorism (CFT)/Obligation of Authorised Persons under Prevention of Money Laundering Act, (PMLA), 2002, as Amended by Prevention of Money Laundering (Amendment) Act, 2009- Cross Border Inward Remittance Under Money Transfer Service Scheme

Financial Action Task Force (FATF) has issued a further statement on October 22, 2010 dividing the Strategic AML/CFT deficient jurisdiction into 2 groups and all Authorised Persons (Indian Agents) have been advised to take into account risks arising from the deficiencies in AML/CFT regime of these countries, while entering into business relationships and

transactions with persons (including legal persons and other financial institutions) from or in these countries/jurisdictions.

[A.P. (DIR Series) Circular No. 50  
dated April 06, 2011]

#### **4. Anti-Money Laundering (AML) Standards/Combating the Financing of Terrorism (CFT) Standards – Money Changing Activities**

Athorised Persons, have been informed that Financial Action Task Force (FATF) has issued a further statement on October 22, 2010 calling upon jurisdictions listed in the statement to complete the implementation of their action plan within the given time frame. The FATF has called upon its members to consider the information given in the statement. Authorised Persons are accordingly advised to consider the information contained in the said statement.

[A.P. (DIR Series) Circular No. 51  
dated April 06, 2011]

#### **5. Anti-Money Laundering (AML) standards/Combating the Financing of Terrorism (CFT) Standards – Cross Border Inward Remittance Under Money Transfer Service Scheme**

Athorised Persons, who are Indian Agents under Money Transfer Service Scheme have been informed that Financial Action Task Force (FATF) has issued a further statement on October 22, 2010 calling upon jurisdictions listed in the statement to complete the implementation of their action plan within the given time frame. The FATF has called upon its members to consider the information given in the statement. Authorised Persons are accordingly advised to consider the information contained in the said statement.

[A.P. (DIR Series) Circular No. 52  
dated April 08, 2011]

#### **6. Overseas Forex Trading Through Electronic/Internet Trading Portals**

In terms of Regulation 4 of Foreign Exchange Management (Foreign Exchange Derivative Contract) Regulations, 2000 (Notification FEMA.25/2000-RB

dated May 03, 2000), as amended from time to time, a person resident in India may enter into a foreign exchange derivative contract in accordance with the provisions contained in Schedule I to hedge an exposure to risk in respect of a transaction permissible under the Foreign Exchange Management Act (FEMA), 1999 or rules or regulations or directions or orders made or issued thereunder. Further, in terms of Regulation 5 A, *ibid*, a person resident in India may enter into currency futures or currency options on a stock exchange recognized under section 4 of the Securities Contract (Regulation) Act, 1956, to hedge an exposure to risk or otherwise, subject to such terms and conditions as may be set forth in the directions issued by the Reserve Bank of India from time to time. In terms of A.P. (DIR Series) Circular No. 32 dated December 28, 2010, a derivative transaction is only permitted based on the presence of an underlying price risk exposure for which purchase and/or sale of foreign exchange is permitted under FEMA, 1999. Further, remittances under the Liberalised Remittance Scheme are allowed only in respect of permissible capital or current account transactions or a combination of both. All other transactions, which are otherwise not permissible under FEMA, 1999, including the transactions in the nature of remittance for margins or margin calls to overseas exchanges/overseas counterparty, are not allowed under the Scheme.

Keeping in view that overseas foreign exchange trading has been introduced on a number of internet / electronic trading portals and advertising to lure the residents with offers of guaranteed high returns based on such forex trading and soliciting some initial investment amount in Indian Rupees. Some companies have reportedly engaged agents who personally contact people to undertake forex trading/ investment schemes and entice them with promises of disproportionate/exorbitant returns. Most of the forex trading through these portals are done on a margining basis with huge leverage or on an investment basis, where the returns are based on forex trading. The public is being asked to make the margin payments for such online forex trading transactions through credit cards/deposits in various accounts maintained with banks in India. It is also observed that accounts are being opened in the name of individuals or proprietary concerns at

different bank branches for collecting the margin money, investment money, etc.

The AD Category-I banks have been advised to exercise due caution and be extra vigilant in respect of above transactions.

[A.P. (DIR Series) Circular No. 53  
dated April 08, 2011]

### **7. Issue of Irrevocable Payment Commitment (IPCs) to Stock Exchanges on behalf of Mutual Funds (MFs) and Foreign Institutional Investors (FIIs)**

In terms of Notification No.FEMA.20/2000-RB dated May 3, 2000, as amended from time to time, Foreign Institutional Investors (FIIs) registered with SEBI may purchase shares or convertible debentures of an Indian company under the Portfolio Investment Scheme (PIS), subject to the condition that no fund based/non-fund based facilities are permitted to the FIIs (Notification No.FEMA.8/2000-RB dated May 03, 2000).

It has been decided to allow custodian banks to issue Irrevocable Payment Commitments (IPCs) in favour of the Stock Exchanges/Clearing Corporations of the Stock Exchanges, on behalf of their FII clients for purchase of shares under the PIS. Issue of IPCs should be in accordance with the Reserve Bank regulations on banks' exposure to the capital market issued by the Reserve Bank from time to time. Further, AD Category – I banks have to comply with the instructions issued by our Department of Banking Operations and Development (DBOD) vide circular no. DBOD Dir. BC.46/13.03.00/2010-11 dated September 30, 2010.

[A.P. (DIR Series) Circular No. 54  
dated April 29, 2011]

### **8. Foreign investments in India by SEBI registered FIIs in other securities**

In terms of Notification No.FEMA.20/2000-RB dated May 3, 2000, as amended from time to time, SEBI registered Foreign Institutional Investor (FII) may purchase, on repatriation basis, listed non-convertible debentures/bonds issued by an Indian company,

subject to such terms and conditions mentioned therein and limits as prescribed for the same by the RBI & the SEBI from time to time. The present limits for such investments is USD 15 billion for FII investment in corporate debt with an additional limit of USD 5 billion for FII investment in bonds with a residual maturity of over five years, issued by Indian companies which are in the infrastructure sector, where 'infrastructure' is defined in terms of the extant guidelines on External Commercial Borrowings (ECB).

It has now been decided, in consultation with the Government, to enhance the FII investment limit in listed non-convertible debentures/bonds, with a residual maturity of five years and above, and issued by Indian companies in the infrastructure sector, where 'infrastructure' is defined in terms of the extant ECB guidelines, by an additional limit of USD 20 billion taking existing limit from USD 5 billion to USD 25 billion (with this the total limit available to FIIs for investment in listed non convertible debentures/bonds would be USD 40 billion with a sub limit of USD 25 billion for investment in listed non-convertible debentures/bonds issued by corporates in the infrastructure sector). Further, such investment by FIIs in listed non-convertible debentures/bonds would have a minimum lock-in period of three years. However, FIIs are allowed to trade amongst themselves during the lock-in period. It has also been decided to allow SEBI registered FIIs to invest in unlisted non-convertible debentures/bonds issued by corporates in the infrastructure sector.

[A.P. (DIR Series) Circular No. 55  
dated April 29, 2011]

### **9. Foreign Exchange Management Act, 1999- Advance Remittance for Import of Goods – Liberalisation**

AD Category – I banks are required to obtain an unconditional, irrevocable standby Letter of Credit (LC) or a guarantee from an international bank of repute situated outside India or a guarantee of an AD Category – I bank in India, if such a guarantee is issued against the counter guarantee of an international bank of repute situated outside India, for an advance remittance exceeding USD 100,000 or its equivalent.

## *Other Items*

### *Foreign Exchange Developments*

With a view to liberalising the procedure, it has been decided to enhance the aforesaid limit of USD 100,000 to USD 200,000 or its equivalent, with immediate effect for importers (other than a Public Sector Company or a Department/Undertaking of Central/State Governments where the requirement

of bank guarantee is to be specifically waived by the Ministry of Finance, Government of India for advance remittances exceeding USD 100,000 or its equivalent).

[A.P. (DIR Series) Circular No. 56  
dated April 29, 2011]