

Foreign Exchange Developments

July 2011

1. Redemption of Foreign Currency Convertible Bonds (FCCBs)

Keeping in view the need to provide a window to facilitate refinancing of FCCBs by the Indian companies who may be facing difficulty in meeting the redemption obligations, it has been decided to consider applications for refinancing of FCCBs by Indian companies under the automatic route. Accordingly, designated AD Category – I banks may allow Indian companies to refinance the outstanding FCCBs subject to compliance with the terms and conditions set out hereunder: -

- i. Fresh ECBs/FCCBs shall be raised with the stipulated average maturity period and applicable all-in-cost being as per the extant ECB guidelines;
- ii. The amount of fresh ECB/FCCB shall not exceed the outstanding redemption value at maturity of the outstanding FCCBs;
- iii. The fresh ECB/FCCB shall not be raised six months prior to the maturity date of the outstanding FCCBs ;
- iv. The purpose of ECB/FCCB shall be clearly mentioned as 'Redemption of outstanding FCCBs' in Form 83 at the time of obtaining Loan Registration Number from the Reserve Bank;
- v. The designated AD – Category I bank should monitor the end-use of funds;
- vi. All other aspects of ECB policy under the automatic route, such as, eligible borrower, recognised lender, end-use, prepayment, refinancing of existing ECB and reporting arrangements shall remain unchanged;
- vii. ECB/FCCB beyond USD 500 million for the purpose of redemption of the existing FCCB will be considered under the approval route; and
- viii. ECB/FCCB availed of for the purpose of refinancing the existing outstanding FCCB will be reckoned as part of the limit of USD 500 million available under the automatic route as per the extant norms.

Restructuring of FCCBs involving change in the existing conversion price is not permissible. Proposals for restructuring of FCCBs not involving change in conversion price will, however, be considered under the approval route depending on the merits of the proposal.

[A.P. (DIR Series) Circular No. 01
dated July 4, 2011]

2. Regularisation of Liaison/Branch Offices of Foreign Entities Established during the pre-FEMA Period

It has come to the notice of the Reserve Bank that certain BOs/LOs established by the foreign NGOs, NPOs, news agencies and other foreign entities are continuing to function in India, without the approval of the Reserve Bank, after the Foreign Exchange Management Act (FEMA), 1999 came into force from June 1, 2000. Under the provisions of FEMA, 1999, *ibid*, the request of such entities to open an office in India is considered by the Reserve Bank in consultation with the Government of India, wherever required.

Accordingly, the foreign entities who have established LO or BO in India and continuing to function without obtaining permission from the Reserve Bank of India should approach the Reserve Bank within a period of 90 days from the date of issue of this circular for regularization of establishment of such offices in India, in terms of the extant FEMA provisions.

The foreign entities who may have established LO or BO with the permission from the Government of India may also approach the Reserve Bank along with a copy of the said approval for allotment of a Unique Identification Number (UIN) by the Reserve Bank of India.

All such applications/requests should be submitted to the Chief General Manager-in-Charge, Reserve Bank of India, Foreign Exchange Department, Foreign Investment Division, Central Office, Fort, Mumbai – 400 001 in form FNC and should be routed

through the AD Category – I bank where the account of such LO/BO is maintained.

All AD Category – I banks may ensure that their constituents operating LO/BO in India have valid approval from the Reserve Bank for the same and that a copy of such approval is kept on record.

[A.P. (DIR Series) Circular No. 02
dated July 15, 2011]

3. Facilitating Rupee Trade – Hedging Facilities for Non-Resident Entities

In order to facilitate greater use of Indian Rupee in trade transactions, as announced in the Monetary Policy Statement for the year 2011-12 (para 85), it has been decided to allow non-resident importers and exporters to hedge their currency risk in respect of exports from and imports to India, invoiced in Indian Rupees, with AD Category I banks in India, as per details given in the [Annex](#).

Necessary amendments to Notification No. FEMA.25/RB-2000 dated May 3, 2000 [Foreign Exchange Management (Foreign Exchange Derivatives Contracts) Regulations, 2000] are being notified separately.

Related Press Release July 21, 2011

Facilitating Rupee Trade – Hedging Facilities for Non-resident Entities

[A.P. (DIR Series) Circular No. 03
dated July 21, 2011]

4. Exim Bank's Line of Credit of USD 20 million to the Government of the Republic of Mozambique

Export-Import Bank of India (Exim Bank) has concluded an Agreement dated March 28, 2011 with the Government of the Republic of Mozambique, making available to the latter, a Line of Credit (LOC) of USD 20 million (USD twenty million) for financing eligible goods, services, machinery and equipment including consultancy services to be exported from India for the purpose of enhancing productivity of rice-wheat-maize cultivation in Mozambique. The goods, services, machinery and equipment including consultancy services from India for exports under this

Agreement are those which are eligible for export under the Foreign Trade Policy of the Government of India and whose purchase may be agreed to be financed by the Exim Bank under this Agreement. Out of the total credit by Exim Bank under this Agreement, the goods and services including consultancy services of the value of at least 75 per cent of the contract price shall be supplied by the seller from India and the remaining 25 per cent goods and services (other than consultancy services) may be procured by the seller for the purpose of Eligible Contract from outside India.

The Credit Agreement under the LOC is effective from June 2, 2011 and the date of execution of Agreement is March 28, 2011. Under the LOC, the last date for opening of Letters of Credit and Disbursement will be 48 months from the scheduled completion date(s) of contract(s) in the case of project exports and 72 months (March 27, 2017) from the execution date of the Credit Agreement in the case of supply contracts.

Shipments under the LOC will have to be declared on GR/SDF Forms as per instructions issued by the Reserve Bank from time to time.

No agency commission is payable under the above LOC. However, if required, the exporter may use his own resources or utilize balances in his Exchange Earners' Foreign Currency Account for payment of commission in free foreign exchange. Authorised Dealer Category-I (AD Category-I) banks may allow such remittance after realisation of full payment of contract value subject to compliance with the prevailing instructions for payment of agency commission.

[A.P. (DIR Series) Circular No. 04
dated July 25, 2011]

5. Exim Bank's Line of Credit of USD 20 million to the Government of the Kingdom of Swaziland

Export-Import Bank of India (Exim Bank) has concluded an Agreement dated March 30, 2011 with the Government of the Kingdom of Swaziland making available to the latter, two Lines of Credit (LOCs), each for an amount of USD 10 million aggregating to USD 20 million (USD twenty million) for financing eligible goods and services including consultancy services,

from India for the purpose of financing the setting up of an Information Technology Park in Swaziland. The goods and services including consultancy services from India for exports under this Agreement are those which are eligible for export under the Foreign Trade Policy of the Government of India and whose purchase may be agreed to be financed by the Exim Bank under this Agreement. Out of the total credit by Exim Bank under this Agreement, the goods and services including consultancy services of the value of at least 75 per cent of the contract price shall be supplied by the seller from India and the remaining 25 per cent goods and services (other than consultancy services) may be procured by the seller for the purpose of Eligible Contract from outside India.

The Credit Agreement under the LOCs is effective from July 6, 2011 and the date of execution of Agreement is March 30, 2011. Under the LOCs, the last date for opening of Letters of Credit and Disbursement will be 48 months from the scheduled completion date(s) of contract(s) in the case of project exports and 72 months (March 29, 2017) from the execution date of the Credit Agreement in the case of supply contracts.

Shipments under the LOCs will have to be declared on GR/SDF Forms as per instructions issued by the Reserve Bank from time to time.

No agency commission is payable under the above LOCs. However, if required, the exporter may use his own resources or utilise balances in his Exchange Earners' Foreign Currency Account for payment of commission in free foreign exchange. Authorised Dealer Category-I (AD Category-I) banks may allow such remittance after realization of full payment of contract value subject to compliance with the prevailing instructions for payment of agency commission.

[A.P. (DIR Series) Circular No. 05
dated July 26, 2011]

6. Exim Bank's Line of Credit of USD 5 million to the Indo-Zambia Bank Limited

Export-Import Bank of India (Exim Bank) has concluded an Agreement dated September 29, 2010

with the Indo-Zambia Bank Limited making available to the latter, a Line of Credit (LOC) of USD 5 million (USD five million) for financing eligible goods and services. The goods and services from India for exports under this Agreement are those which are eligible for export under the Foreign Trade Policy of the Government of India and whose purchase may be agreed to be financed by the Exim Bank under this Agreement.

The Credit Agreement under the LOC is effective from June 29, 2011 and the date of execution of the Agreement is September 29, 2010. Under the LOC, the last date for opening of Letters of Credit and Disbursement will be 36 months (June 28, 2014) and 42 months (December 28, 2014) from the execution date of the Credit Agreement respectively.

Shipments under the credit will have to be declared on GR/SDF Forms as per instructions issued by the Reserve Bank from time to time.

While no agency commission shall be payable in respect of exports financed under the above line of credit, the Reserve Bank may consider, on merits, requests for payment of commission up to a maximum of 5 per cent of the FOB (free on board)/CFR (cost and freight)/CIF (cost, insurance and freight) value in respect of goods exported and which require after sales service. In such cases, commission will have to be paid by deduction from the invoice of relevant shipment to agents and the reimbursable amount by the Exim Bank to the negotiating bank will be 90 per cent of the FOB/CFR/CIF value. Approval for the payment of commission should be obtained from the office of the Reserve Bank of India (Foreign Exchange Department) within whose jurisdiction the Head Office of the exporter is situated, before the relevant shipment is effected. In other cases (*i.e.* exports not involving after sales service), if required, the exporter may use his own resources or utilize the balances of his EEFC a/c for payment of agency commission in free foreign exchange. Authorised Dealer Category-I (AD Category-I) banks may allow such remittance after realisation of full payment of contract value subject to compliance of prevailing instructions on payment of agency commission.

[A.P. (DIR Series) Circular No. 06
dated July 26, 2011]

Annex

Rupee Trade – Hedging Facilities for Non-Resident Entities

Purpose

To hedge the currency risk arising out of genuine trade transactions involving exports from and imports to India, **invoiced in Indian Rupees**, with AD Category I banks in India.

Products

Forward foreign exchange contracts with rupee as one of the currencies and foreign currency-INR options.

Operational Guidelines, Terms and Conditions

The AD Category I banks can opt for either Model I or Model II as given below:

Model I**Non-resident exporter/importer dealing through their overseas bank (including overseas branches of AD banks in India)**

- Non-resident exporter/importer approaches his banker overseas with appropriate documents with a request for hedging their Rupee exposure arising out of a confirmed import or export order invoiced in Rupees.
- The overseas bank in turn approaches its correspondent in India (*i.e.*, the AD bank in India) for a price to hedge the exposure of its customer along with documentation furnished by the customer that will enable the AD bank in India to satisfy itself that there is an underlying trade transaction (scanned copies would be acceptable). The following undertakings also need to be taken from the customer:
 - That the same underlying exposure has not been hedged with any other AD Category I bank/s in India.
 - If the underlying exposure is cancelled, the customer will cancel the hedge contract immediately.
- A certification on the end client KYC may also be taken as a one time document from the overseas bank by the AD bank in India.
- The AD bank in India based on documents **received** from the overseas correspondent should satisfy itself about the existence of the underlying trade transaction and offer a

forward price (no two-way quotes should be given) to the overseas bank who, in turn, will offer the same to its customer. The AD bank, therefore, will 'not be' dealing directly with the overseas importer/exporter.

- The amount and tenor of the hedge should not exceed that of the underlying transaction and should be in consonance with the extant regulations regarding tenor of payment/realization of the proceeds.
- On due date, settlement is to be done through the correspondent bank's Vostro or the AD bank's Nostro accounts.
- The contracts, once cancelled, cannot be rebooked.
- The contracts may, however, be rolled over on or before maturity subject to maturity of the underlying exposure.
- On cancellation of the contracts, gains may be passed on to the customer subject to the customer providing a declaration that he is not going to rebook the contract or that the contract has been cancelled on account of cancellation of the underlying exposure.
- In case the underlying trade transaction is extended, rollover can be permitted once based on the extension of the underlying trade transaction for which suitable documentation is to be provided by the overseas bank and the same procedure followed as in case of the original contract.

Model II**Non-resident exporter/importer dealing directly with the AD bank in India**

- The overseas exporter/importer approaches the AD bank in India with a request for forward cover in respect of underlying transaction for which he furnishes appropriate documentation (scanned copies would be acceptable), on a pre-deal basis to enable the AD bank in India to satisfy itself that there is an underlying trade transaction, and details of his overseas banker, address *etc.* The following undertakings also need to be taken from the customer

Annex (Concl.)

- That the same underlying exposure has not been hedged with any other AD Category I bank/s in India.
- If the underlying exposure is cancelled, the customer will cancel the hedge contract immediately.
- The AD bank may obtain certification of KYC/AML in the format appended to this Annex (Appendix A). The format can be obtained through the overseas correspondent/bank through SWIFT authenticated message. In case the AD bank has a presence outside India, the AD may take care of the KYC/AML through its bank's offshore branch.
- AD banks should evolve appropriate arrangements to mitigate credit risk. Credit limits can be granted based on the credit analysis done by self/the overseas branch.
- The amount and tenor of the hedge should not exceed that of the underlying transaction and should be in consonance with the extant regulations regarding tenor of payment/realization of the proceeds.
- On due date, settlement is to be done through the correspondent bank's Vostro or the AD bank's Nostro accounts. AD banks in India may release funds to the beneficiaries only after sighting funds in Nostro/Vostro accounts.
- The contracts, once cancelled, cannot be rebooked.
- The contracts may, however, be rolled over on or before maturity subject to maturity of the underlying exposure.
- On cancellation of the contracts, gains may be passed on to the customer subject to the customer providing a declaration that he is not going to rebook the contract or that the contract has been cancelled on account of cancellation of the underlying exposure.
- In case the underlying trade transaction is extended, rollover can be permitted once based on the extension of the underlying trade transaction for which suitable documentation is to be provided by the overseas bank and the same procedure followed as in case of the original contract.

Reporting

- i) Authorised Dealers should consolidate the data on the transactions undertaken by non-residents under the scheme and submit quarterly reports as per the format indicated in the Appendix 'B'.
- ii) Authorised Dealers should report on a quarterly basis, doubtful transactions involving frequent cancellation of hedge transactions and/or the underlying trade transactions by non-residents under the scheme as per the format indicated in the Appendix 'C'.

The reports are to be sent to the Chief General Manager, Reserve Bank of India, Foreign Exchange Department, Central Office, Forex Markets Division, Amar Building, Mumbai - 400 001.

Appendix

Appendix A

Know Your Customer (KYC) Form in respect of the non-resident exporter/importer

Registered Name of the non-resident exporter/importer (Name, if the non-resident exporter/importer is an Individual)
Registration Number (Unique Identification Number* in case non-resident exporter/importer is an Individual)
Registered Address (Permanent Address if non-resident exporter/importer is an Individual)
Name of the non-resident exporter's/importer's Bank
Non-resident exporter's/importer's Bank Account No.
Period of banking relationship with the non-resident exporter/importer

* Passport No., Social Security No. or any Unique No. certifying the bonafides of the non-resident exporter/importer as prevalent in the Non-resident exporter's/importer's country

We confirm that all the information furnished above is true and accurate as provided by the overseas remitting bank of the non-resident exporter/importer.

(Signature of the Authorised
Official of the AD bank)

Date :
Stamp :

Place:

Appendix B

Reporting of Derivative transactions undertaken by non-resident importer/exporter – for the quarter ended

Name of the AD Category I Bank –

No. of non-resident importers/ exporters availing the facility.		Total amount of derivative transactions Undertaken (INR crores)	
Importers	Exporters	Forwards	FCY-INR options

Appendix C

Reporting of suspicious transactions undertaken by non-resident importer/exporter – for the quarter ended .

Name of the AD Category I Bank –

Sl No	Name of the non-resident exporter/importer	Name of the overseas bank (in case of Model I)	No. of derivative transactions cancelled along with cancellation of the underlying trade transaction and amount involved	Action taken by the AD Cat I bank

Related Press Release July 21, 2011

Facilitating Rupee Trade - Hedging Facilities for Non-resident Entities