

Foreign Exchange Developments

1. External Commercial Borrowings (ECB) Policy – ECB by Small Industries Development Bank of India (SIDBI)

Further to the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, notified vide Notification No. FEMA 3/2000-RB dated May 3, 2000, amended from time to time and A.P. (DIR Series) Circular No. 5 dated August 1, 2005 relating to the External Commercial Borrowings (ECB); on a review of the extant ECB policy, it has been decided to include SIDBI as an eligible borrower for availing of ECB for on-lending to MSME sector, as defined under the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006, subject to the following terms and conditions:-

- a) such on-lending by SIDBI shall be to the borrowers' directly either in INR or in foreign currency (FCY);
 - (i) the foreign currency risk shall be hedged by SIDBI in full in case of on-lending to MSME sector in INR; and
 - (ii) on-lending in foreign currency shall be subject to Regulation 5(5) of FEMA Notification No. 3/2000-RB dated May 03, 2000, as amended from time to time and shall only be to those beneficiaries which have natural hedge by way of foreign exchange earnings;
- b) availment of ECBs, including the outstanding ECBs, up to 50 per cent of their owned funds, for on-lending to MSME sector, will be under the automatic route and beyond 50 per cent of owned funds, will be under the approval route, subject to a ceiling of USD 500 million per financial year; and
- c) the proceeds of ECB availed by SIDBI, shall be used for on-lending to MSME sector only for the permissible end-uses as provided under the extant ECB policy.

All other conditions of ECB, such as recognised lender, all- in-cost, average maturity, prepayment,

refinancing of existing ECB and reporting arrangements shall remain unchanged. The amended ECB policy shall come into force with immediate effect and is subject to review based on the experience gained in this regard.

[A.P. (DIR Series) Circular No. 48
dated November 6, 2012]

2. Money Transfer Service Scheme – List of Sub Agents

As per extant instructions, Authorised Persons (APs), who are Indian Agents under the Money Transfer Service Scheme (MTSS), are required to submit list of their Sub Agents to the Foreign Exchange Department (FED), Central Office (CO) of the Reserve Bank on a half yearly basis. On a review, it has been decided to discontinue submission of the said half yearly statement to FED, CO. The list of Sub Agents has already been placed on the RBI website (www.rbi.org.in). Authorised Persons (Indian Agents) should inform any addition/deletion to the list (names and addresses of Sub Agents) immediately, as and when they appoint/remove any Sub Agent under the scheme, to the concerned Regional Offices (ROs) of the Foreign Exchange Department (FED) of the Reserve Bank, under whose jurisdiction their registered offices fall and the Forex Markets Division, Foreign Exchange Department, Reserve Bank of India, Central Office, Mumbai-400001. Authorised Persons (Indian Agents) should visit the RBI website and verify the list of Sub Agents on regular intervals and any aberration to the list observed may immediately be brought to the notice of the concerned FED ROs and FED Central Office (CO). Further, Authorised Persons (Indian Agents) should confirm the veracity of the list placed on RBI website to FED CO either in form of a letter or by e-mail at within 15 days of the end of a quarter.

[A.P. (DIR Series) Circular No. 49
dated November 7, 2012]

3. Memorandum of Instructions governing Money Changing Activities

In terms of Para 17 of Part E of the Annex-I to the Memorandum of Instructions to Authorised Money Changers (AMCs), issued vide A.P.(DIR Series) Circular No.57 [A.P.(FL/RL Series) Circular No.04] dated March 09, 2009 all single branch AMCs having a turnover of more than US \$ 100,000 or equivalent per month and all multiple branch AMCs should institute a system of monthly audit.

On a review based on representations received, it has been decided to allow AMCs having multiple branches to put in place a system of Concurrent Audit which will cover 80 per cent of the transactions value-wise under a system of monthly audit and rest 20 per cent of the transactions value-wise under quarterly audit.

All other instructions issued vide A.P.(DIR Series) Circular No. 57 [A.P.(FL/RL Series) Circular No.04] dated March 09, 2009, as amended from time to time will remain unchanged.

[A.P. (DIR Series) Circular No. 50
dated November 7, 2012]

4. 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

Based on several representations received from Full Fledged Money Changers (FFMCs), regarding difficulties in obtaining documents other than passport, and taking into account the procedure followed for money changing in other countries, it has been decided to amend certain instructions contained in the aforementioned Part. F-Part-II of the Annex to the A.P. (Dir Series) Circular No. 17 [A.P. (FL/RL Series) Circular No. 04] dated November 27, 2009, as amended by the A.P. (Dir Series) Circular No. 60 dated December 22, 2011. The amended instructions are given in the Annex.

All the other instructions contained in the A.P. (DIR Series) Circular No. 17 [A.P. (FL/RL Series) Circular No. 04] dated November 27, 2009, as amended from time to time shall remain unchanged

These guidelines are also applicable mutatis mutandis to all agents/franchisees of Authorised Persons and it will be the sole responsibility of the franchisers to ensure that their agents/franchisees also adhere to these guidelines.

[A.P. (DIR Series) Circular No. 51
dated November 15, 2012]

5. Export of Goods and Software – Realisation and Repatriation of export proceeds – Liberalisation

In terms of A.P. (DIR Series) Circular No. 40 dated November 01, 2011 the period of realisation and repatriation to India of the amount representing the full export value of goods or software exported was enhanced from six months to twelve months from the date of export. This relaxation was available up to September 30, 2012.

The issue has since been reviewed and it has been decided, in consultation with the Government of India, to extend the above relaxation *w.e.f.* **October 01, 2012 till March 31, 2013**. The provisions in regard to period of realisation and repatriation to India of the full export value of goods or software exported by a unit situated in a Special Economic Zone (SEZ) as well as exports made to warehouses established outside India remain unchanged.

[A.P. (DIR Series) Circular No. 52
dated November 20, 2012]

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

The Rupee value of the Special Currency Basket has been fixed at ₹75.570411 with effect from October 25, 2012.

[A.P. (DIR Series) Circular No. 53
dated November 20, 2012]

7. External Commercial Borrowings (ECB) Policy for 2G spectrum allocation

With reference to A.P. (DIR Series) Circular No. 26 dated October 22, 2008, para 2 (v) of A.P. (DIR Series) Circular No.19 dated December 9, 2009, A.P. (DIR Series) Circular No. 28 dated January 25, 2010 relating to External Commercial Borrowings (ECB) for spectrum allocation., the following relaxation have been provided.

As per the extant policy, eligible borrowers in the telecommunication sector are permitted to avail of ECB for the purpose of payment for spectrum allocation, under the automatic route. Successful bidders of 3G auction were also permitted to make the payment for spectrum allocation initially out of Rupee resources to be refinanced with a long-term ECB under the approval route subject to certain conditions.

3. On a review of the ECB policy and keeping in view the large outlay of funds required to be paid directly to the Government within a limited period of time, the following relaxations are provided for the 2G spectrum auction:

(i) Refinancing of Rupee resources

The successful bidders making the **upfront payment** for the award of 2G spectrum initially out of Rupee loans availed of from the domestic lenders would be eligible to refinance such Rupee loans with a long-term ECB, under the **automatic route**, subject to the following conditions:

- a. the long term ECB shall be raised within a period of 18 months from the date of sanction of such Rupee loans for the stated purpose from the domestic lenders;
- b. the designated AD Category I bank has evidenced the payment of upfront fees to GoI in the form of a receipt/challan from DoT; and
- c. the designated AD – Category I bank shall monitor the end-use of funds.

(ii) Relaxation in ECB-liability ratio and percentage of shareholding

The successful bidders in the 2G auction will be allowed to avail of ECB under the '**automatic route**'

from their ultimate parent company without any maximum ECB liability-equity ratio subject to the condition that the lender holds minimum paid-up equity of 25 per cent in the borrower company, either directly or indirectly.

(iii) Bridge Finance facility

The successful bidders can avail of short term foreign currency loan in the nature of bridge finance under the 'automatic route' for the purpose of making upfront payment towards 2G spectrum allocation and replace the same with a long term ECB under the automatic route subject to the following conditions:-

- (a) the long term ECB is raised within a period of 18 months from the date of drawdown of bridge finance; and
- (b) the long term ECB is in compliance with all the extant guidelines on ECB.

The relaxations in respect of the ECB liability-equity ratio, percentage of shareholding by the ultimate parent, refinancing of Rupee loans and bridge finance are part of a special dispensation applicable only to the successful bidders in the upcoming 2G spectrum auction.

All other aspects of ECB policy, such as **USD 750 million limit per company per financial year under the automatic route**, eligible borrower, recognised lender, end-use, average maturity period, all-in-cost, prepayment, refinancing of existing ECB and reporting arrangements remain unchanged.

Reserve Bank has since amended the Regulations and notified vide Notification No.24/2012 RB dated November 12, 2012.

[A.P. (DIR Series) Circular No. 54 dated November 26, 2012]

8. Liaison Office (LO)/Branch Office (BO) in India by Foreign Entities – Reporting to Income Tax Authorities.

In terms of A.P. (DIR Series) Circular No. 24 dated 30.12.2009 LOs/BOs are required to furnish copy of the Annual Activity Certificate (AAC) to Director General

of Income Tax (International Taxation), Drum Shaped Building, I.P. Estate, New Delhi 110002.

It is clarified that copies of the AACs submitted to the DGIT (International Taxation) should be accompanied by audited financial statements including receipt and payment account.

Further, at the time of renewal of permission of LOs by AD banks, they may note to endorse a copy of each such renewal to the office of the DGIT (international Taxation).

[A. P. (DIR Series) Circular No. 55
dated November 26 , 2012]

9. Exim Bank's Line of Credit of USD 13.095 million to the Government of the Republic of Togo

Export-Import Bank of India (Exim Bank) has concluded an Agreement dated January 12, 2012 with the Government of the Republic of Togo, making available to the latter, a Line of Credit (LOC) of USD 13.095 million (USD thirteen million ninety five thousand) for the purpose of Farming and Cultivation of Rice, Maize and Sorghum in Togo. The goods, machinery, equipment 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 percent 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 April 27, 2012 and the date of execution of Agreement is January 12, 2012. 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 (January 11, 2018) from the execution date of the Credit Agreement in the case of supply contracts.

3. 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 utilise balances in his Exchange Earners' Foreign Currency Account for payment of commission in free foreign exchange. Authorised Dealer Category-1 (AD Category-1) 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.56
dated November 27, 2012]

Annex

Customer Identification Procedure Features to be verified and documents that may be obtained from customers Extant Guidelines		Revised Guidelines	
Features	Documents	Features	Documents
Transactions With Individuals		Transactions With Individuals	
- Legal name and any other names used	i) Passport (ii) PAN card (iii) Voter's Identity Card (iv) Driving licence (v) Identity card (subject to the AP's satisfaction) (vi) Letter from a recognised public authority or public servant verifying the identity and residence of the customer to the satisfaction of the AP.	- Legal name and any other names used	i) Passport (ii) PAN card (iii) Voter's Identity Card (iv) Driving licence (v) Identity card (subject to the AP's satisfaction) (vi) Letter from a recognised public authority or public servant verifying the identity and residence of the customer to the satisfaction of the AP.
- Correct permanent address	<p>(i) Telephone bill (ii) Bank account statement (iii) Letter from any recognised public authority (iv) Electricity bill (v) Ration card (vi) Letter from employer (subject to satisfaction of the AP).</p> <p>(any one of the documents, which provides customer information to the satisfaction of the AP will suffice).</p> <p>Note: – In case of foreign tourists, copies of passport containing identification particulars and address, may be accepted as documentary proof for both identification as well as address. Further, a copy of the visa of non-residents, duly stamped by Indian Immigration authorities may also be obtained and kept on record.</p>	- Correct permanent address	<p>(i) Telephone bill (ii) Bank account statement (iii) Letter from any recognised public authority (iv) Electricity bill (v) Ration card (vi) Letter from employer (subject to satisfaction of the AP).</p> <p>(any one of the documents, which provides customer information to the satisfaction of the AP will suffice).</p> <p>Note: – In case of foreign tourists, copies of passport containing identification particulars and address, may be accepted as documentary proof for both identification as well as address. Further, a copy of the visa of non-residents, duly stamped by Indian Immigration authorities may also be obtained and kept on record. However, where neither passports contain any address nor foreign tourists are able to produce any address proof, APs may obtain and keep on record, a copy of passport and visa duly stamped by the Indian Immigration authorities and a declaration duly signed from foreign tourists regarding the permanent address.</p>