

Foreign Exchange Developments

June 2011

1. Remittance of Assets by Foreign Nationals – Opening of NRO Accounts

It has been decided to permit the foreign nationals employed in India holding valid visas and eligible to maintain resident accounts with an Authorised Dealer Category – I banks in India to re-designate their resident account maintained in India as NRO account on leaving the country after their employment to enable them to receive their pending bonafide dues, subject to the following conditions

- a. AD Category-I bank should obtain the full details from the account holder about his legitimate dues expected to be received into his account.
- b. AD Category-I bank has to satisfy itself as regards the credit of amounts which have to be bonafide dues of the account holder when she/he was a resident in India.
- c. The funds credited to the NRO account should be repatriated abroad immediately, subject to the AD Category-I bank satisfying itself regarding the payment of the applicable Income tax and other taxes in India.
- d. The amount repatriated abroad should not exceed USD one million per financial year.
- e. The debit to the account should be only for the purpose of repatriation to the account holder's account maintained abroad.
- f. There should not be any other inflow/credit to this account other than that mentioned at point (a) above.
- g. AD Category-I bank should put in place proper internal control mechanism to monitor the credits and debits to this account.
- h. The account should be closed immediately after all the dues have been received and repatriated as per the declaration made by the account holder mentioned at paragraph (a) above.

[A.P. (DIR Series) Circular No. 70
dated June 9, 2011]

2. Exim Bank's Line of Credit of USD 36.56 Million to the Government of the United Republic of Tanzania

In an agreement between Export-Import Bank of India (Exim Bank) the Government of the United Republic of Tanzania dated March 28, 2011, a Line of Credit (LoC) of USD 36.56 million (USD thirty six million and five hundred sixty thousand) for financing eligible goods and services including consultancy services from India for the purpose of financing the purchase of 723 vehicles under the India Africa Fund into Tanzania was made available to the latter.

The Credit Agreement under the LoC is effective from May 20, 2011 and the date of execution of Agreement is March 28, 2011. Under the LoC, the last date for opening of the 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.

[A.P. (DIR Series) Circular No. 71
dated June 14, 2011]

3. Exim Bank's Line of Credit of USD 91 Million to the Government of the Federal Democratic Republic of Ethiopia

An Agreement dated February 18, 2011 between Export-Import Bank of India (Exim Bank) and Government of the Federal Democratic Republic of Ethiopia was concluded with the making available to the latter, a Line of Credit (LoC) of USD 91 million (USD ninety one million) for financing eligible goods and services including consultancy services, machinery and equipment from India for the purpose of financing development of sugar industry in Ethiopia. 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 will be agreed to be financed by the Exim Bank under this Agreement.

The Credit Agreement under the LoC is effective from May 24, 2011 and the date of execution of Agreement is February 18, 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 (February 17, 2017) from the execution date of the Credit Agreement in the case of supply contracts.

[A.P. (DIR Series) Circular No. 72
dated June 16, 2011]

4. Overseas Direct Investment – Liberalisation/Rationalisation

With a view to restating the various provisions relating to transfer by way of sales of a joint venture or wholly owned subsidiary (JV or WOS) outside India with and without write off, the existing guidelines are consolidated as indicated below:

Transfer by way of sale of shares of a JV/WOS:

An Indian Party, without prior approval of the Reserve Bank, will transfer by way of sale to another Indian Party which complies with the provisions of Regulation 6 of FEMA Notification 120/RB-2004 dated July 7, 2004 or to a person resident outside India, any share or security held by it in a JV or WOS outside India subject to the following conditions:

- i. the sale does not result in any write off of the investment made.
- ii. the sale is to be effected through a stock exchange where the shares of the overseas JV/WOS are listed;
- iii. if the shares are not listed on the stock exchange and the shares are disinvested by a private arrangement, the share price is not less than the value certified by a Chartered Accountant/Certified Public Accountant as the fair value of the shares based on the latest audited financial statements of the JV/WOS;

- iv. the Indian Party does not have any outstanding dues by way of dividend, technical know-how fees, royalty, consultancy, commission or other entitlements and/or export proceeds from the JV or WOS;
- v. the overseas concern has been in operation for at least one full year and the Annual Performance Report together with the audited accounts for that year has been submitted to the Reserve Bank;
- vi. the Indian party is not under investigation by CBI/DoE/SEBI/IRDA or any other regulatory authority in India.

Transfer by way of sale of shares of a JV/WOS involving write off of the investment:

Indian Parties may disinvest without prior approval of the Reserve Bank, in the under noted cases where the amount repatriated on disinvestment is less than the amount of the original investment:

- in cases where the JV/WOS is listed in the overseas stock exchange;
- in cases where the Indian Party is listed on a stock exchange in India and has a net worth of not less than ₹100 crore;
- where the Indian Party is an unlisted company and the investment in the overseas venture does not exceed USD 10 million and
- where the Indian Party is a listed company with net worth of less than ₹100 crore but investment in an overseas JV/WOS does not exceed USD 10 million.

Such disinvestments shall be subject to the conditions listed at items (ii) to (vi) above.

The Indian Party is required to submit details of such disinvestment through its designated AD category-I bank within 30 days from the date of disinvestment.

An Indian Party, which does not satisfy the conditions stated above for undertaking any disinvestment in its JV/WOS abroad, shall have to apply to the Reserve Bank for prior permission.

[A.P. (DIR Series) Circular No. 73
dated June 29, 2011]

5. Foreign Direct Investment (FDI) in India – Issue of equity shares under the FDI Scheme allowed under the Government route

It has been decided to permit issue of equity shares/preference shares under the Government route of the FDI scheme for the following categories of transactions:

(a) Import of capital goods/machineries/equipments (including second-hand machineries), subject to compliance with the following conditions:

- The import of capital goods, machineries, *etc.*, made by a resident in India, is in accordance with the Export/Import Policy issued by the Government of India as notified by the Directorate General of Foreign Trade (DGFT) and the regulations issued under the Foreign Exchange Management Act (FEMA), 1999 relating to imports issued by the Reserve Bank;
- There is an independent valuation of the capital goods/machineries/equipments (including second-hand machineries) by a third party entity, preferably by an independent valuer from the country of import along with production of copies of documents/certificates issued by the customs authorities towards assessment of the fair-value of such imports;
- The application should clearly indicate the beneficial ownership and identity of the importer company as well as the overseas entity; and
- All such conversions of import payables for capital goods into FDI should be completed within 180 days from the date of shipment of goods.

(b) Pre-operative/pre-incorporation expenses (including payments of rent, *etc.*) subject to compliance with the following conditions:

- Submission of FIRC for remittance of funds by the overseas promoters for the expenditure incurred;

- Verification and certification of the pre-incorporation/pre-operative expenses by the statutory auditor;
- Payments should be made directly by the foreign investor to the company. Payments made through third parties citing the absence of a bank account or similar such reasons will not be eligible for issuance of shares towards FDI; and
- The capitalization should be completed within the stipulated period of 180 days permitted for retention of advance against equity under the extant FDI policy.

All requests for conversion should be accompanied by a special resolution of the company. Government's approval would be subject to pricing guidelines of the Reserve Bank and appropriate tax clearance.

[A.P. (DIR Series) Circular No. 74
dated June 30, 2011]

6. Buyback/Prepayment of Foreign Currency Convertible Bonds (FCCBs)

It has been decided to extend the time limit for buyback of FCCBs and liberalise the procedure. Accordingly, the applications for buyback of FCCBs by Indian companies, both under the automatic and approval routes will be considered as detailed hereunder:

- a. Under Automatic Route, Indian companies are allowed to prematurely buyback FCCBs subject to compliance with the terms and conditions set out hereunder:
 - i) the buyback value of the FCCB shall be at a minimum discount of 8 per cent on the book value;
 - ii) the funds used for the buyback shall be out of existing foreign currency funds held either in India (including funds held in the EEFC account) or abroad and/or out of fresh ECB raised in conformity with the current ECB norms; and
 - iii) where the fresh ECB is co-terminus with the outstanding maturity of the original FCCB and is for less than three years the all-in-cost ceiling

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should not exceed 6 months Libor plus 200 bps as applicable to short term borrowings. In other cases, the all-in-cost for the relevant maturity of the ECB, as laid down in A. P. (DIR Series) No.26 dated October 22, 2008, shall apply.

- b. Under Approval Route, Indian companies will be permitted to buyback FCCBs up to USD 100 million of the redemption value per company, out of their internal accruals with the prior approval of the Reserve Bank, subject to a :
- i) minimum discount of 10 per cent of book value for redemption value up to USD 50 million;

- ii) minimum discount of 15 per cent of book value for the redemption value over USD 50 million and up to USD 75 million; and
- iii) minimum discount of 20 per cent of book value for the redemption value of over USD 75 million and up to USD 100 million.

This facility shall come into force with immediate effect and the entire process of buyback should be completed by March 31, 2012.

[A.P. (DIR Series) Circular No. 75
dated June 30, 2011]