

Foreign Exchange Developments

November 2011

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

In terms of A.P. (DIR Series) Circular No.10 dated September 07, 2011 the Rupee value of the special currency basket was indicated as ₹66.9682 effective from August 23, 2011. A further revision has taken place on September 15, 2011 and accordingly, the Rupee value of the special currency basket was fixed at ₹69.09329 with effect from September 20, 2011.

[A.P. (DIR Series) Circular No. 39 dated November 1, 2011]

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

The relaxation in the period of realization and repatriation to India of the amount representing the full export value of goods or software exported, from **six months to twelve months** from the date of export which was available up to September 30, 2011, has since been reviewed and it was decided, in consultation with the Government of India, to extend the same w.e.f. October 01, 2011 till September 30, 2012. The provisions in regard to period of realization 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. 40 dated November 1, 2011]

3. Memorandum of Instructions Governing Money Changing Activities

In terms of A. P. (DIR Series) Circular No. 57 [A.P. (FL/RL Series) Circular No. 04] dated March 9, 2009 applications from Authorised Money Changers for additional offices in metropolitan cities are considered

if the total offices (including proposed offices) of the applicant are in the ratio 1:1 (*i.e.* the applicant has one non-metropolitan office for every office in a metro). In order to provide more flexibility, to authorised persons to decide the location of their branches, it was decided to dispense with the criteria of 1:1 ratio between metro and non-metro branches. However, we expect branches to be diversified and to be meeting the demand of tourists, *etc.* All the other instructions shall remain unchanged.

[A.P. (DIR Series) Circular No. 41 dated November 1, 2011]

4. Foreign Investment in India by SEBI Registered FIIs in Other Securities

In terms of A.P.(DIR Series) Circular No.55 dated April 29, 2011, the limit for FII investment in non-convertible debentures/bonds issued by Indian companies in the infrastructure sector was enhanced from USD 5 billion to USD 25 billion. This was subject to the conditions that such instruments shall have a residual maturity of five years and above, the investments would have a lock-in-period of three years and 'infrastructure' would be as defined under the extant External Commercial Borrowings (ECB) policy. Further, in terms of A.P. (DIR Series) Circular No.8 dated August 9, 2011, Qualified Foreign Investors as defined therein (QFIs) were allowed to invest in units of Mutual Funds debt schemes upto a limit of USD three billion within the overall limit of USD 25 billion for FII investment in non-convertible debentures/bonds issued by Indian companies in the infrastructure sector. On a review it was decided as under:

- i) FIIs would also be allowed to invest in non-convertible debentures/bonds issued by Non-Banking Financial Companies categorised as 'Infrastructure Finance Companies'(IFCs) by the Reserve Bank of India within the overall limit of US\$ 25 billion.
- ii) The lock-in-period of three years for FII investment stands reduced to one year up to an

amount of USD 5 billion within the overall limit of USD 25 billion. This lock-in-period shall be computed from the time of first purchase by FIIs.

- iii) The residual maturity of five years and above stipulated would now onwards refer to the original maturity of the instrument at the time of first purchase by a FII.
- iv) The above changes at (i) and (iii) above would also apply for QFI investment in units of Mutual Fund debt schemes within the limit of USD three billion.

[A.P. (DIR Series) Circular No. 42 dated November 3, 2011]

5. Foreign Direct Investment – Transfer of Shares

As a measure to further liberalise and rationalise the procedures and policies governing FDI in India, it has now been decided to allow the following without the prior approval of the Reserve Bank of India:

A. *Transfer of shares from a Non Resident to Resident under the FDI scheme where the pricing guidelines under FEMA, 1999 are not met provided that:-*

- i. The original and resultant investment are in line with the extant FDI policy and FEMA regulations in terms of sectoral caps, conditionalities (such as minimum capitalization, etc.), reporting requirements, documentation, etc.;
- ii. The pricing for the transaction is compliant with the specific/explicit, extant and relevant SEBI regulations/guidelines (such as IPO, Book building, block deals, delisting, exit, open offer/substantial acquisition/SEBI SAST, buy back); and
- iii. Chartered Accountants Certificate to the effect that compliance with the relevant SEBI regulations/guidelines as indicated above is attached to the form FC-TRS to be filed with the AD bank.

B. *Transfer of shares from Resident to Non Resident :*

- i) *where the transfer of shares requires the prior approval of the FIPB* as per the extant FDI policy provided that:

- a) the requisite approval of the FIPB was obtained; and
- b) the transfer of share adheres with the pricing guidelines and documentation requirements as specified by the Reserve Bank of India from time to time.

ii) *where SEBI (SAST) guidelines are attracted* subject to the adherence with the pricing guidelines and documentation requirements as specified by Reserve Bank of India from time to time.

iii) *where the pricing guidelines under the Foreign Exchange Management Act (FEMA), 1999 are not met provided that:-*

- a) The resultant FDI is in compliance with the extant FDI policy and FEMA regulations in terms of sectoral caps, conditionalities (such as minimum capitalization, etc.), reporting requirements, documentation, etc.;
- b) The pricing for the transaction is compliant with the specific/explicit, extant and relevant SEBI regulations/guidelines (such as IPO, Book building, block deals, delisting, exit, open offer/substantial acquisition/SEBI SAST); and
- c) Chartered Accountants Certificate to the effect that compliance with the relevant SEBI regulations/guidelines as indicated above is attached to the form FC-TRS to be filed with the AD bank.

iv) *where the investee company is in the financial sector provided that:*

- a) NOCs are obtained from the respective financial sector regulators/regulators of the investee company as well as transferor and transferee entities and such NOCs are filed along with the form FC-TRS with the AD bank; and
- b) The FDI policy and FEMA regulations in terms of sectoral caps, conditionalities (such as minimum capitalization, etc.), reporting requirements, documentation etc., are complied with.

[A.P. (DIR Series) Circular No. 43 dated November 4, 2011]

6. Trade Credits for Imports into India – Review of all-in-cost Ceiling

On a review of developments in the global financial markets and the fact that domestic importers are experiencing difficulties in raising Trade Credit within the existing all-in-cost ceiling, it was decided to revise the all-in-cost ceiling for Trade Credits as under:

Maturity Period	All-in-cost over 6 month LIBOR*	
	Existing	Revised
Upto one year		
More than one year and upto three years	200 bps	350 bps

* for the respective currency of credit or applicable benchmark

The all-in-cost ceilings include arranger fee, upfront fee, management fee, handling/processing charges, out of pocket and legal expenses, if any. The change in the all-in-cost ceiling will come into force immediately. The enhancement in all-in-cost ceiling is applicable upto March 31, 2012 and subject to review thereafter. All other aspects of Trade Credit policy remain unchanged.

[A.P. (DIR Series) Circular No. 44 dated November 15, 2011]

7. Foreign Direct Investment – Reporting of Issue/Transfer of 'Participating Interest/Right' in Oil Fields to a non-resident as a Foreign Direct Investment Transaction

It has now been decided, in consultation with the Government, to treat the issue/transfer of 'participating interest/rights' in oil fields to a non-resident as Foreign Direct Investment (FDI) transaction under the extant FDI policy and the FEMA regulations. Accordingly, these transactions have to be reported as FDI transactions in terms of the provisions of Regulations 9 and 10 of the Foreign Exchange Management (Transfer of Issue of Security by a Person Resident outside India) Regulations, 2000 notified vide Notification No. FEMA 20/2000-RB dated May 3, 2000, as amended from time to time read with A.P. (DIR Series) Circular No.63 dated April 22, 2009 as well as

paragraph 9 of Schedule I to the Foreign Exchange Management (Transfer of Issue of Security by a Person Resident outside India) Regulations, 2000 notified vide Notification No. FEMA 20/2000-RB dated May 3, 2000, as amended from time to time. Accordingly, transfer of 'participating interest/rights' will be reported as 'other' category under Para 7 of revised Form FC-TRS as given in the Annex and issuance of 'participating interest/rights' will be reported as 'other' category of instruments under Para 4 of Form FC-GPR.

[A.P. (DIR Series) Circular No. 45 dated November 16, 2011]

8. Overseas Forex Trading Through Electronic/Internet Trading Portals

It has been observed that overseas foreign exchange trading has been introduced on a number of internet/electronic trading portals luring the residents with offers of guaranteed high returns based on such forex trading. The advertisements by these internet/online portals exhort people to trade in forex by way of paying the 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.* It is again reiterated that AD Category - I banks should exercise due caution and be extra vigilant in respect of the transactions that require residents to make margin payments for online forex trading transactions through credit cards/deposits in various accounts maintained with banks in India. It is clarified that any person resident in India collecting and effecting/remitting such payments directly/indirectly outside India would make himself/herself liable to be proceeded against with for contravention of the Foreign

Exchange Management Act (FEMA), 1999 besides being liable for violation of regulations relating to Know Your Customer (KYC) norms/Anti Money Laundering (AML) standards.

[A.P. (DIR Series) Circular No. 46
dated November 17, 2011]

9. 'Set-off' of Export Receivables against import payables – Liberalisation of Procedure

As a measure of further liberalization, it has been decided to delegate power to AD Category – I banks to deal with the cases of 'set-off' of export receivables against import payables, subject to following terms and conditions:

- a. The import is as per the Foreign Trade Policy in force.
- b. Invoices/Bills of Lading/Airway Bills and Exchange Control copies of Bills of Entry for home consumption have been submitted by the importer to the Authorized Dealer bank.
- c. Payment for the import is still outstanding in the books of the importer.
- d. Both the transactions of sale and purchase may be reported separately in 'R' Returns.
- e. The relative GR forms will be released by the AD bank only after the entire export proceeds are adjusted/received.
- f. The 'set-off' of export receivables against import payments should be in respect of the same overseas buyer and supplier and that consent for 'set-off' has been obtained from him.
- g. The export/import transactions with ACU countries should be kept outside the arrangement.
- h. All the relevant documents are submitted to the concerned AD bank who should comply with all the regulatory requirements relating to the transactions.

[A.P. (DIR Series) Circular No. 47
dated November 17, 2011]

10. Mid – Sea Trans-shipment of catch by Deep Sea Fishing Vessel

With a view to rationalize the procedures, it was decided in consultation with the Government of India

that for mid-sea trans-shipment of catches by Indian owned vessels, as per the norms prescribed by the Ministry of Agriculture, Government of India, the GR declaration procedure as outlined in the Annex-I should be followed by the exporter in conformity with Regulation 3 of Notification No.FEMA.23/2000-RB dated May 3, 2000.

An updated list of International Marine Cargo Surveyors was also enclosed as Annex -II. The earlier instructions issued in this regard vide AD (MA Series) Circular No. 15 dated May 31, 1993 stands superceded. All other provisions under FEMA, as applicable for exports, would be applicable, mutatis mutandis, for catches exported at mid sea trans-shipment by the deep sea fishing Vessels.

[A.P. (DIR Series) Circular No. 48
dated November 21, 2011]

11. Foreign Investments in Infrastructure Debt Funds

It was decided to allow investment on repatriation basis by eligible non-resident investors (as mentioned in para 3 below) in (i) Rupee and Foreign currency denominated bonds issued by the Infrastructure Debt Funds (IDFs) set up as an Indian company and registered as Non-Banking Financial Companies (NBFCs) with the Reserve Bank of India and in (ii) Rupee denominated units issued by IDFs set up as SEBI registered domestic Mutual Funds(MFs), in accordance with the terms and conditions stipulated by the SEBI and the Reserve Bank of India from time to time.

These investments would be subject to the terms and conditions specified in the Circular.

[A.P. (DIR Series) Circular No. 49
dated November 22, 2011]

12. Comprehensive Guidelines on Over the Counter (OTC) Foreign Exchange Derivatives – Foreign Currency – INR swaps

In terms of the sub-para (iv) (c) on Foreign Currency-INR swaps in para 1 of the Part B.I. of the Section B in the Annex to the A.P. (DIR Series) Circular

No. 32 dated December 28, 2010 the extant instructions state that 'Swap transactions may be undertaken by AD Category I banks as intermediaries by matching the requirements of corporate counterparties. While no limits are placed on the AD Category I banks for undertaking swaps to facilitate customers to hedge their foreign exchange exposures, a limit of USD 100 million is placed for net supply of foreign exchange in the market....'

On a review, it was decided to remove the above limit of US\$ 100 million placed for these swap transactions.

[A.P. (DIR Series) Circular No. 50
dated November 23, 2011]

13. External Commercial Borrowings (ECB) Policy

On a review of developments in the global financial markets and the fact that borrowers are experiencing difficulties in raising ECBs within the existing all-in-cost ceiling, it was decided to revise the all-in-cost ceiling for ECB as under:

Average Maturity Period	All-in-cost over 6 month LIBOR*	
	Existing	Revised
Three years and up to five years	300 bps	350 bps
More than five years	500 bps	500 bps (no change)

* for the respective currency of borrowing or applicable benchmark

The enhancement in all-in-cost ceiling is applicable up to March 31, 2012 and subject to review thereafter. The change in the all-in-cost ceiling will come into force immediately. All other aspects of ECB policy remain unchanged.

[A.P. (DIR Series) Circular No. 51
dated November 23, 2011]

14. External Commercial Borrowings (ECB) Policy – Parking of ECB proceeds

At present, borrowers are permitted to either keep ECB proceeds abroad or remit these funds to India, pending utilisation for permissible end-uses. ECB proceeds parked overseas can be invested in liquid assets, such as, deposits or Certificates of Deposit or other products offered by banks (rated not less than AA (-) by Standard and Poor/Fitch IBCA or Aa3 by Moody's), Treasury bills and other monetary instruments of one year maturity having minimum rating as indicated above and deposits with overseas branches/subsidiaries of Indian banks abroad. The underlying principle is that funds should be invested in such a way that the investments can be liquidated as and when funds are required by the borrower. ECB funds may also be repatriated to India for credit to the borrowers Rupee accounts with AD Category I banks in India pending utilization for the permissible end-uses.

Based on a review of the current macro economic conditions, it was decided that henceforth the proceeds of the ECB raised abroad meant for Rupee expenditure in India, such as, local sourcing of capital goods, on-lending to Self-Help Groups or for micro credit, payment for spectrum allocation, etc. should be brought immediately for credit to their Rupee accounts with AD Category I banks in India. In other words, ECB proceeds meant only for foreign currency expenditure can be retained abroad pending utilisation. The rupee funds, however, will not be permitted to be used for investment in capital markets, real estate or for inter-corporate lending, as hitherto.

The amended ECB policy will come into force with immediate effect and is subject to review. All other aspects of ECB policy would remain unchanged.

[A.P. (DIR Series) Circular No. 52
dated November 23, 2011]