

*Foreign
Exchange Developments*

December 2009

**i) External Commercial
Borrowings (ECB) Policy**

On a review of the prevailing macroeconomic conditions and developments in international financial markets, it was decided to modify some aspects of the ECB policy as indicated below:

- (i) All-in-cost ceilings - In view of the improvement in the credit market conditions and narrowing credit spreads in the international market, the existing relaxation in the all-in-cost ceilings under the approval route has been withdrawn with effect from January 1, 2010. Accordingly, the all-in-cost ceilings under the approval route for the ECBs, where Loan Agreements have been signed on or after January 1, 2010 are as under:

Average Maturity Period	All -in-cost Ceilings over six month Libor*
Three years and up to five years	300 basis points
More than five years	500 basis points

* for the respective currency of borrowing or applicable benchmark.

Eligible borrowers proposing to avail of ECB after December 31, 2009, where the Loan Agreement has been signed on or before December 31, 2009 and where the all-in-cost exceed the above ceilings, should furnish a copy of the Loan Agreement. Such proposals would continue to be considered under the approval route.

- (ii) Integrated township - On a review of the prevailing conditions, the current policy of permitting corporates engaged in the development of integrated township, as defined in Press Note 3 (2002 Series)

dated January 04, 2002, issued by the Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce & Industry, Government of India to avail of ECB, under the approval route has been extended until December 31, 2010.

- iii) Buyback of the Foreign Currency Convertible Bonds (FCCBs) - Keeping in view the prevailing macroeconomic conditions and global developments, especially the improvements in the stock prices, the facility of allowing the Indian companies to the buyback their Foreign Currency Convertible Bonds (FCCBs) both under the automatic route and approval route has been discontinued with effect from January 1, 2010.
- iv) ECB for the NBFC Sector - As per the current ECB norms, Non-Banking Finance Companies (NBFCs), which are exclusively involved in the financing of the infrastructure sector, are permitted to avail of ECBs from multilateral / regional financial institutions and Government owned development financial institutions for on-lending to the borrowers in the infrastructure sector under the approval route. In view of the thrust given to development of infrastructure sector, NBFCs exclusively involved in financing the infrastructure projects have been allowed to avail of ECB from the recognised lender category including international banks under the approval route, subject to complying with the prudential standards prescribed by the Reserve Bank and the borrowing entities fully hedging their currency risk, with effect from December 9, 2009. The AD

Category-I bank should certify the compliance with the prudential norms by the borrowing NBFCs.

- (v) ECB for Spectrum in the Telecommunication Sector - Eligible borrowers in the telecommunication sector have been permitted to avail of ECB for the purpose of payment for Spectrum allocation. This modification will come into effect from December 9, 2009.

[A.P. (DIR Series) Circular No.19
dated December 9, 2009]

ii) Exim Bank's Line of Credit of USD 10 million to the Government of the Republic of Djibouti

Export-Import Bank of India (Exim Bank) has concluded an Agreement dated April 13, 2007 with the Government of the Republic of Djibouti making available to the latter, a Line of Credit (LOC) of USD 10 million (USD ten million) for financing eligible goods and services including consultancy services from India for setting up a cement plant in Djibouti.

[A. P. (DIR Series) Circular No. 20
dated December 17, 2009]

iii) Advance Remittance for Import of Rough Diamonds

In terms of A.P.(DIR Series) Circular No.34 dated March 02, 2007, A.P.(DIR Series) Circular No.3 dated August 4, 2008 and A.P.(DIR Series) Circular No.8 dated August 21, 2008, AD Category -I banks have been permitted to make advance remittance without any limit and without bank

guarantee or standby letter of Credit, by an importer (other than Public Sector Company or Department / Undertaking of the Government of India /State Governments), for import of rough diamonds into India from eight mining companies, subject to certain conditions.

Based on the recommendations of the Gems and Jewellery Export Promotion Council (GJEPC), it was decided to include the name of Namibia Diamond Trading Company (PTY) Ltd (NDTC) to make advance remittance without any limit and without bank guarantee or standby letter of Credit.

Accordingly, AD Category –I banks have been permitted to make advance remittance without any limit and without bank guarantee or standby letter of Credit, by an importer (other than Public Sector Company or Department / Undertaking of the Government of India /State Governments), for import of rough diamonds into India from the undernoted nine mining companies, subject to certain conditions:

- i. De Beers UK Limited,
- ii. RIO TINTO, UK,
- iii. BHP Billiton, Australia,
- iv. ENDIAMA, E.P. Angola,
- v. ALROSA, Russia,
- vi. GOKHARAN, Russia,
- vii. RIO TINTO, Belgium,
- viii. BHP Billiton, Belgium and
- ix. Namibia Diamond Trading Company (PTY) Ltd (NDTC).

[A. P. (DIR Series) Circular No. 21
dated December 29, 2009]

iv) Exchange Earner's Foreign Currency (EEFC) Account – Clarification

In terms of Regulation 4 of Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2000 notified *vide* Notification no. FEMA 10/ 2000- RB dated May 3, 2000, as amended from time to time, a person resident in India is permitted to open, hold and maintain with an Authorised Dealer in India a Foreign Currency Account known as Exchange Earner's Foreign Currency (EEFC) Account subject to the terms and conditions of the Exchange Earner's Foreign Currency Account Scheme specified in the Schedule to the above mentioned Notification. It was clarified that all categories of foreign exchange earners are allowed to credit up to 100 per cent of their foreign exchange earnings, as specified in the paragraph 1 (A) of the Schedule, to their EEFC Account. As such, it is in order for the Authorised Dealers to allow SEZ developers to open, hold and maintain EEFC Account and to credit up to 100 per cent of their foreign exchange earnings, as specified in the paragraph 1 (A) of the Schedule.

[A. P. (DIR Series) Circular No. 22
dated December 29, 2009]

v) Establishment of Branch (BO) / Liaison Offices (LO) in India by Foreign Entities - Eligibility Criteria and Procedural Guidelines

With the objective of achieving greater transparency, the eligibility criteria and the procedural guidelines for establishment of BO and LO in India were placed in the

public domain. Accordingly, the broad criteria regarding eligibility for opening of BO / LOs, documentation, *etc.*, are given in Annex A to the A.P. (DIR Series) Circular and the scope of activities permitted and other procedural guidelines regarding functioning of the BO / LO in India are given in Annex B to the circular.

The application for establishing BO / LO in India may be forwarded by the foreign entity in Form FNC through a designated AD Category - I bank (*i.e.* an AD Category – I bank identified by the applicant with whom they intend to pursue banking relations) to the Chief General Manager-in-Charge, Reserve Bank of India, Foreign Exchange Department, Foreign Investment Division, Central Office, Fort, Mumbai-400 001, along with the prescribed documents. The designated AD Category - I bank should exercise due diligence in respect of the applicant's background, antecedents of the promoter, nature and location of activity, sources of funds, *etc.* and also ensure compliance with the KYC norms before forwarding the application together with their comments/ recommendations to the Reserve Bank.

Applications from foreign banks and insurance companies will continue to be directly received and examined by the Department of Banking Operations and Development (DBOD), Reserve Bank, Central Office and the Insurance Regulatory and Development Authority (IRDA), respectively, as hitherto. Approval of the Reserve Bank is not required to establish a branch/unit in Special Economic Zones for undertaking manufacturing and service activities, subject to compliance with the conditions specified in Notification No.

FEMA 102/2003-RB dated October 3, 2003 read with A.P. (DIR Series) Circular No.58 dated January 16, 2004.

[A. P. (DIR Series) Circular No. 23 dated December 30, 2009]

vi) Establishment of Branch (BO) / Liaison Offices (LO) in India by Foreign Entities — Delegation of Powers

With a view to liberalising the existing procedure in respect of BO/ LOs, the powers have been delegated to the designated AD Category - I banks, as under :

- i) Submission of Annual Activity Certificate - With effect from February 01, 2010, the Annual Activity Certificate as at the end of March 31 shall be submitted, on or before April 30, to the designated AD Category – I bank and a copy to the Directorate General of Income Tax (International Taxation), Drum Shape Building, I.P. Estate, New Delhi 110002.

The designated AD Category - I bank shall scrutinise the Annual Activity Certificate and ensure that the activities undertaken by the BO/LO are being carried out in accordance with the terms and conditions of the approval given by the Reserve Bank.

- ii) Extension of validity period of Liaison Offices - The designated AD Category - I bank may, with effect from February 01, 2010, extend the validity period of LO/s for a period of 3 years from the date of expiry of the original approval / extension granted by the Reserve Bank,

if the applicant has complied with certain conditions and the application is otherwise in order.

- iii) Closure of Branch / Liaison Office/s - With effect from February 01, 2010, the work related to closure of Branch / Liaison Offices, hitherto being done by the Reserve Bank (Central Office in the case of Branch Offices and Regional Office in the case of Liaison Offices), shall be

handled by the designated AD Category - I bank. The closure formalities shall be dealt with in accordance with Regulation 6 (1) (iii) of Notification No. FEMA 13/2000-RB dated May 3, 2000 *viz.* Foreign Exchange Management (Remittance of Assets) Regulations 2000, as amended from time to time.

[A. P. (DIR Series) Circular No. 24
dated December 30, 2009]