Foreign Exchange Developments

1. Exim Bank's Line of Credit of USD 20 million to the Government of Mongolia

Export-Import Bank of India (Exim Bank) has concluded an Agreement dated February 14, 2012 with the Government of Mongolia**,** making available to the latter, a Line of Credit (LOC) of USD 20 million (USD twenty million) for financing eligible machinery, equipments, goods and services including consultancy services for the purpose of India-Mongolia Joint Information Technology Education and Outsourcing Center (IMJIT) Project in Mongolia. The machinery, equipment, 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 65 per cent of the contract price shall be supplied by the seller from India and the remaining 35 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 August 23, 2012 and the date of execution of Agreement is February 14, 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 (February 13, 2018) from the execution date of the Credit Agreement in the case of supply contracts.

[A.P. (DIR Series) Circular No.24
dated September 6, 2012]

2. Overseas Investment by Indian Parties in Pakistan

In terms of Regulation 6 (2) of the Notification No. FEMA 120/RB-2004 dated July 7, 2004 [Foreign Exchange Management (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2004] (the Notification), as amended from time to time, 'Notwithstanding anything contained in these Regulations, investment in Pakistan shall not be permitted.' It has now been decided that the overseas direct investment by Indian Parties in Pakistan shall henceforth be considered under the approval route under Regulation 9 of the Notification, *ibid.*

[A. P. (DIR Series) Circular No. 25
dated September 7, 2012]

3. External Commercial Borrowings (ECB) Policy – Repayment of Rupee loans and/or fresh Rupee capital expenditure – USD 10 billion scheme

As per A.P. (DIR Series) Circular No. 134 dated June 25, 2012, the maximum permissible ECB that can be availed of by an individual company under the scheme is limited to 50 per cent of the average annual export earnings realised during the past three financial years.

On a review, it has been decided:

(a) to enhance the maximum permissible limit of ECB that can be availed of to 75 per cent of the average foreign exchange earnings realised during the immediate past three financial years or 50 per cent of the highest foreign exchange earnings realised in any of the immediate past three financial years, whichever is higher;

(b) in case of Special Purpose Vehicles (SPVs), which have completed at least one year of existence from the date of incorporation and do not have sufficient track record/past performance for three financial years, the maximum permissible ECB that can be availed of will be limited to 50 per cent of the annual export earnings realised during the past financial year; and

(c) The maximum ECB that can be availed by an individual company or group, as a whole, under this scheme will be restricted to USD 3 billion.

[A.P. (DIR Series) Circular No. 26 dated September 11, 2012]

4. External Commercial Borrowings (ECB) Policy – Bridge Finance for Infrastructure sector

As per the A.P. (DIR Series) Circular No. 26 dated September 23, 2011, Indian companies in the infrastructure sector, where 'infrastructure' is as defined under the extant guidelines on External Commercial Borrowings, have been allowed to import capital goods by availing of short term credit (including buyers'/suppliers' credit) in the nature of 'bridge finance', under the approval route, subject to the following conditions:-

i. the bridge finance shall be replaced with a long term ECB;

ii. the long term ECB shall comply with all the extant ECB norms; and

iii. prior approval shall be sought from the Reserve Bank for replacing the bridge finance with a long term ECB.

On a review, it has been decided to allow refinancing of such bridge finance (if in the nature of buyers'/suppliers' credit) availed of, with an ECB under the **automatic route** subject to the following conditions:-

i. the buyers'/suppliers' credit is refinanced through an ECB before the maximum permissible period of trade credit;

ii. the AD evidences the import of capital goods by verifying the Bill of Entry;

iii. the buyers'/suppliers' credit availed of is compliant with the extant guidelines on trade credit and the goods imported conform to the DGFT policy on imports; and

iv. the proposed ECB is compliant with all the other extant guidelines relating to availment of ECB.

The borrowers will, therefore, approach the Reserve Bank under the approval route only at the time of availing of bridge finance which will be examined subject to conditions mentioned in para 2(i) and (ii).

[A.P. (DIR Series) Circular No. 27 dated September 11, 2012]

5. Trade Credits for Import into India

As per the extant A.P. (DIR Series) Circular No. 87 dated April 17, 2004 and A.P. (DIR Series) Circular No. 24 dated November 01, 2004., for import of capital goods as classified by DGFT, AD banks may approve trade credits up to USD 20 million per import transaction with a maturity period of more than one year and less than three years (from the date of shipment). No roll-over/extension is permitted beyond the permissible period. AD banks are also permitted to issue Letters of Credit/ guarantees/Letter of Undertaking (LoU)/Letter of Comfort (LoC) in favour of overseas supplier, bank and financial institution, up to USD 20 million per transaction for a period up to three years for import of capital goods, subject to prudential guidelines issued by the Reserve Bank from time to time. The period of such Letters of credit/guarantees/LoU/ LoC has to be co-terminus with the period of credit, reckoned from the date of shipment. AD banks shall not, however, approve trade credit exceeding USD 20 million per import transaction.

On a review, it has been decided to allow companies in the infrastructure sector, where 'infrastructure' is as defined under the extant guidelines on External Commercial Borrowings (ECB) to avail of trade credit up to a maximum period of five years for import of capital goods as classified by DGFT subject to the following conditions: -

i. the trade credit must be abinitio contracted for a period not less than fifteen months and should not be in the nature of short-term roll overs; and

ii. i) AD banks are not permitted to issue Letters of Credit/guarantees/Letter of Undertaking (LoU)/Letter of Comfort (LoC) in favour of overseas supplier, bank and financial institution for the extended period beyond three years

The all-in-cost ceilings of trade credit will be as under: Maturity period	All-in-cost ceilings over 6 months LIBOR*
Up to one year	350 basis points
More than one year and up to three years	
More than three years and up to five years	

* 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.

[A.P. (DIR Series) Circular No. 28
dated September 11, 2012]

6. Overseas Direct Investments by Indian Party – Rationalisation

It has been decided to amend the guidelines relating to submission of Annual Performance Report (APR) as under:

An Indian party, which has set up/acquired a Joint Venture (JV) or Wholly Owned Subsidiary (WOS) overseas in terms of the Regulations of the Notification *ibid*, shall submit, to the designated Authorised Dealer every year, an Annual Performance Report (APR) in Form ODI Part III in respect of each JV or WOS outside India and other reports or documents as may be specified by the Reserve Bank from time to time, on or before the 30th of June each year. The APR, so required to be submitted, has to be based on the latest audited annual accounts of the JV/WOS, unless specifically exempted by the Reserve Bank.

The exemption granted for submission of APR based on the un-audited accounts of the JV/WOS subject to the terms and conditions as specified in the A.P (DIR Series) Circular No. 96 dated March 28, 2012 shall continue.

[A.P. (DIR Series) Circular No. 29
dated September 12, 2012]

7. Comprehensive Guidelines on Over the Counter (OTC) Foreign Exchange Derivatives – Cost Reduction Structures

Attention of Authorised Dealers Category – I (AD Category – I) banks is invited to the Foreign Exchange Management (Foreign Exchange Derivative Contracts) Regulations, 2000 dated May 3, 2000 [Notification No. FEMA/25/RB-2000 dated May 3, 2000] and A.P. (DIR Series) Circular No.32 dated December 28, 2010, as amended from time to time.

Under the extant instructions, use of cost reduction structures, *i.e.*, cross currency option cost reduction structures and foreign currency –INR option cost reduction structures have been permitted to hedge exchange rate risk arising out of trade transactions and the External Commercial Borrowings (ECBs).

On a review, it has been decided to permit the use of cost reduction structures for hedging the exchange rate risk arising out of foreign currency loans availed of domestically against FCNR (B) deposits.

[A.P. (DIR Series) Circular No. 30
dated September 12, 2012]

8. Establishment of Liaison Office (LO)/ Branch Office (BO)/Project Office (PO) in India by Foreign Entities – Clarification.

In terms of Notification No FEMA 95/2000-RB dated July 02, 2003 general permission is granted to a foreign company to open project office in India provided it has secured from an Indian company, a contract to execute a project in India, and subject to satisfying certain other criteria.

It is clarified that permission to establish offices, in India by foreign Non-Government Organisations/ Non-Profit Organisations/Foreign Government Bodies/Departments, by whatever name called, are under the Government Route as specified in A. P. (DIR Series) Circular No. 23 dated December 30, 2009. Accordingly, such entities are required to apply to the Reserve Bank for prior permission to establish an office in India, whether Project Office or otherwise.

[A. P. (DIR Series) Circular No. 31
dated September 17, 2012]

9. Foreign investment in Single–Brand Product Retail Trading/Multi-Brand Retail Trading/Civil Aviation Sector/ Broadcasting Sector/Power Exchanges - Amendment to the Foreign Direct Investment Scheme

The extant Foreign Direct Investment policy (Notification No. FEMA 20/2000-RB dated May 3, 2000, as amended from time to time) has since been reviewed and it has now been decided as follows:

a) FDI up to 100 per cent is now permitted in Single–Brand Product Retail Trading by only one non-resident entity, whether owner of the brand or otherwise, under the Government route subject to the terms and conditions as stipulated in Press Note No. 4 (2012 Series) dated September 20, 2012 issued by the Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, Government of India.

b) FDI up to 51 per cent is now permitted in Multi-Brand Retail Trading under the Government route, subject to the terms and conditions as stipulated in Press Note No. 5 (2012 Series) dated September 20, 2012 issued by the Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, Government of India.

c) Foreign airlines are permitted FDI up to 49 per cent in the capital of Indian companies in Civil Aviation Sector, operating scheduled and non-scheduled air transport, under the automatic/ Government route subject to the terms and conditions as stipulated in Press Note No. 6 (2012 Series) dated September 20, 2012 issued by the Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, Government of India.

d) FDI limits in companies engaged in providing Broadcasting Carriage Services under the automatic/Government route have been reviewed and the same would be subject to the terms and conditions as stipulated in Press Note No. 7 (2012 Series) dated September 20, 2012 issued by the Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, Government of India.

e) FDI up to 49 per cent is permitted in Power Exchanges registered under the Central Electricity Regulatory Commission (Power Market) Regulations, 2010, under the Government route, subject to the terms and conditions as stipulated in Press Note No. 8 (2012 Series) dated September 20, 2012 issued by the Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, Government of India.

[A. P. (DIR Series) Circular No. 32
dated September 21, 2012]

10. 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

Attention of Authorised Persons (APs) is invited to Para 4.4 (f) of F-Part- I of the Annex to the A.P. (Dir

Series) Circular No.17 [A.P.(FL/RL Series) Circular No.04] dated November 27, 2009 on the captioned subject and condition (iv) of Para 5 (Part-E) of Annex-I to the A.P. (Dir Series) Circular No.57 [A.P.(FL/RL Series) Circular No.04] dated March 9, 2009 on Memorandum of Instructions governing money changing activities, as amended from time to time.

It is clarified that for sale of foreign exchange to a person within his/her eligibility on single drawal, APs may receive payment only by crossed cheque drawn on the bank account of the applicant's firm/company sponsoring the visit of the applicant/Banker's cheque/Pay Order/Demand Draft/debit cards/credit cards/prepaid cards, if the rupee payment exceeds `50,000/-. For sale of foreign exchange to a person within his/her eligibility through more than one drawal within 30 days or for a single journey/visit abroad, APs may receive second and subsequent payments only by crossed cheque drawn on the bank account of the applicant's firm/company sponsoring the visit of the applicant/Bank's cheque/Pay Order/Demand Draft/debit cards/credit cards/prepaid cards, if the total rupee payment, including payments on earlier drawal/s, exceeds `50,000/- on the second or subsequent drawals.

[A. P. (DIR Series) Circular No. 33
dated September 24, 2012]

11. Foreign Exchange Management Act, 1999-Import of gold in any form including jewellery made of gold/precious metals or/and studded with diamonds/semi precious/precious stones - clarification

In terms of A.P.(DIR Series) Circular No.59 dated May 6, 2011, AD Category – I banks have been permitted to approve Suppliers' and Buyers' credit (trade credit) including the usance period of Letters of Credit for import of rough, cut and polished diamonds, for a period not exceeding 90 days, from the date of shipment.

It is clarified that Suppliers' and Buyers' credit (trade credit) including the usance period of Letters of Credit opened for import of gold in any form including jewellery made of gold/precious metals or/and studded with diamonds/semi precious/precious stones should not exceed 90 days, from the date of shipment.

[A.P. (DIR Series) Circular No. 34
dated September 24, 2012]

12. Establishment of Liaison Offices (LO)/Branch Offices (BO)/Project Offices(PO) in India by Foreign Entities – Reporting requirement

Attention of Authorised Dealer Category – I banks is invited to A.P. (DIR Series) Circular No. 6 dated August 9, 2010 read with paragraph 5 (i) of A.P. (DIR Series) Circular No.24 dated December 30, 2009 regarding submission of Annual Activity Report. Their ttention is also drawn to reporting requirements in respect of Project Offices prescribed in A.P. (DIR Series) Circular No. 44 dated May 17, 2005 in the matter.

It has now been decided that in addition to the reporting prescribed in terms of aforesaid circulars, all the new entities setting up LO/BO/PO shall also:

i. submit a report containing information as per Annex within five working days of the LO/BO/PO becoming functional to the DGP of the state concerned in which LO/BO/PO has established its office; if there are more than one office of such a foreign entity, in such cases to each of the DGP concerned of the state where it has established office in India;

ii. a copy of the report as per Annex shall also be filed with the DGP concerned on annual basis along with a copy of the Annual Activity Certificate/Annual report required to be submitted by LO/BO/PO concerned, as the case may be.

iii. A copy of report thus filed as above shall also be filed with AD by LO/BO/PO concerned.

The existing LO/BO/PO shall henceforth report the information as per Annex along with the copy of

Annual Activity Certificate/Annual report to DGP of state concerned and also file a copy of the same with AD bank. **The instructions come into force with immediate effect.**

[A.P. (DIR Series) Circular No. 35
dated September 25, 2012]

13. Foreign Direct Investment (FDI) in India - Allotment of Shares to person resident outside India under Memorandum of Association (MoA) of an Indian company - Pricing guidelines

Attention of Authorised Dealers Category-I (AD Category - I) banks is invited to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 notified vide Notification No. FEMA 20/2000 -RB dated May 3, 2000 (hereinafter referred to as Notification No. FEMA 20), as amended from time to time.

In terms of sub-regulation (1) of Regulation 5 of the Notification ibid, a person resident outside India or an entity incorporated outside India may purchase shares or convertible debentures of an Indian company under Foreign Direct Investment Scheme, subject to compliance with the issue price specified in para 5 of Schedule 1 of the Notification *ibid.*

It has been decided that in cases, where non-residents (including NRIs) make investment in an Indian company in compliance with the provisions of the Companies Act, 1956, by way of subscription to Memorandum of Association, such investments may be made at face value subject to their eligibility to invest under the FDI scheme.

[A.P. (DIR Series) Circular No. 36
dated September 26, 2012]

14. 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. 6 dated July 13, 2012, the Rupee value of the Special Currency Basket was indicated as `75.816175 effective from July 6, 2012.

AD Category-I banks are advised that a further revision has taken place on September 13, 2012 and accordingly, the Rupee value of the Special Currency Basket has been fixed at `78.105433 with effect from September 17, 2012.

[A.P. (DIR Series) Circular No. 37
dated September 26, 2012]