

Foreign Exchange Developments

1 Exim Bank's Line of Credit of USD 40.32 million to the Government of the Republic of Chad

Export-Import Bank of India (Exim Bank) has concluded an Agreement dated January 19, 2012 with the Government of the Republic of Chad, making available to the latter, a Line of Credit (LOC) of USD 40.32 million (USD forty million three hundred and twenty thousand) for financing eligible goods, services, machinery and equipment including consultancy services from India for the purpose of financing of four projects viz, (i) Compost Production Unit (USD 7.20mn), (ii) Rural Electrification (solar energy) (USD 15 mn), (iii) Production Unit of Live Stock Feed (USD 2.22 mn) and (iv) Extension of Spinning Mill (addition of weaving and processing capacities) (USD 15.90 mn) in Chad. The goods, services, machinery and equipment 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 sellers from India and the remaining 25 percent goods and services (other than consultancy services) may be procured by the sellers for the purpose of Eligible Contract from outside India.

The Credit Agreement under the LOC is effective from July 26, 2012 and the date of execution of Agreement is January 19, 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 18, 2018) from the execution date of the Credit Agreement in the case of supply contracts.

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-I (AD Category-I) 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. 14
dated August 13, 2012]

2. Overseas Direct Investments – Rationalisation of Form ODI

It has been decided to add the following items in Section 'E' and 'F' of Form ODI Part I, to be submitted by every Indian party in terms of Regulation 6(2)(vi) of the Notification, while undertaking ODI transactions:

- i. In Section 'E', after item (c), item '(d) wherever applicable, the Annual Performance Report, as required in terms of Regulation 15(iii) of the Notification No. FEMA 120/RB – 2004 dated July 07, 2004, as amended from time to time, in respect of all the existing JV/WOS of the Indian party has been submitted.'
- ii. In Section 'F', after item (v), a clause 'Further, certified that, wherever applicable, the Annual Performance Report, as required in terms of Regulation 15(iii) of the Notification *ibid*, in respect of all the existing JV/WOS of the Indian party has been submitted.'

The revised Section 'E' and 'F' of Form ODI Part I are given in the Annex to the Circular.

[A.P. (DIR Series) Circular No. 15
dated August 21, 2012]

3. Foreign Direct Investment by citizen/entity incorporated in Pakistan

It has now been decided that notwithstanding anything contained in sub-regulation (1) of Regulation 5 of the Notification No. FEMA 20, a person who is a citizen of Pakistan or an entity incorporated in Pakistan

may, with the prior approval of the Foreign Investment Promotion Board of the Government of India, purchase shares and convertible debentures of an Indian company under Foreign Direct Investment Scheme, subject to the terms and conditions specified in Schedule 1 of the Notification, *ibid*, provided further that notwithstanding anything contained in Schedule 1 of the Notification, *ibid*, the Indian company, receiving such foreign direct investment, is not engaged or shall not engage in sectors/activities pertaining to defence, space and atomic energy and sectors/activities prohibited for foreign investment.

[A.P. (DIR Series) Circular No. 16
dated August 22, 2012]

4. Anti-Money Laundering (AML)/ Combating the Financing of Terrorism (CFT) Standards – Money changing activities

Attention is drawn to A.P. (DIR Series) Circular No. 107 dated April 17, 2012 on risks arising from the deficiencies in AML/CFT regime of certain jurisdiction. Financial Action Task Force (FATF) has issued a further Statement on June 22, 2012 on the subject.

Authorised Persons are accordingly advised to consider the information contained in the enclosed statement. This, however, does not preclude Authorised Persons from legitimate transactions with these countries and jurisdictions.

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. 17
dated August 23, 2012]

5. Anti-Money Laundering (AML)/ Combating the Financing of Terrorism (CFT) Standards – Cross Border Inward Remittance under Money Transfer Service Scheme (MTSS)

Attention is drawn to A.P. (DIR Series) Circular No. 108 dated April 17, 2012 on risks arising from the

deficiencies in AML/CFT regime of certain jurisdictions. Financial Action Task Force (FATF) has issued a further Statement on June 22, 2012 on the subject.

Authorised Persons (Indian Agents) are accordingly advised to consider the information contained in the enclosed statement. This, however, does not preclude Authorised Persons (Indian Agents) from legitimate transactions with these countries and jurisdictions.

These guidelines would also be applicable *mutatis mutandis* to all Sub-Agents of the Indian Agents under MTSS and it will be the sole responsibility of the APs (Indian Agents) to ensure that their Sub-agents also adhere to these guidelines.

[A.P. (DIR Series) Circular No. 18
dated August 23, 2012]

6. Issue of Indian Depository Receipts (IDRs)-Limited two way fungibility

It has now been decided to allow a limited two way fungibility for IDRs (similar to the limited two way fungibility facility available for ADRs/GDRs) subject to the following terms and conditions:

- i. The conversion of IDRs into underlying equity shares would be governed by the conditions mentioned in paras 6 and 7 of A.P. (DIR Series) Circular No. 5 dated July 22, 2009.
- ii. Fresh IDRs would continue to be issued in terms of the provisions of A.P. (DIR Series) Circular No. 5 dated July 22, 2009.
- iii. The re-issuance of IDRs would be allowed only to the extent of IDRs that have been redeemed/converted into underlying shares and sold.
- iv. There would be an overall cap of USD 5 billion for raising of capital by issuance of IDRs by eligible foreign companies in Indian markets. This cap would be akin to the caps imposed for FII investment in debt securities and would be monitored by SEBI.

Accordingly, Para 5 of A.P. (DIR Series) Circular No. 5 dated July 22, 2009 stands amended as above.

The issuance, redemption and fungibility of IDRs would also be subject to the SEBI (Issue of Capital and

Disclosure Requirements) Regulations, 2009, as amended from time to time as well as other relevant guidelines issued in this regard by the Government, the SEBI and the RBI from time to time.

[RBI/2012-13/178 A. P. (DIR Series) Circular No. 19 dated August 28, 2012]

7. Non-resident guarantee for non-fund based facilities entered between two resident entities

Borrowing and lending of Indian Rupees between two persons resident in India does not attract the provisions of the Foreign Exchange Management Act, 1999. In case where a Rupee loan is granted against the guarantee provided by a person resident outside India, there is no transaction involving foreign exchange until the guarantee is invoked and the non-resident guarantor is required to meet the liability under the guarantee. The Reserve Bank vide Notification No. FEMA 29/2000-RB dated September 26, 2000 has granted general permission to a person resident in India, being a principal debtor, to make payment to a person resident outside India, who has met the liability under a guarantee.

On a review, it has been decided to extend the facility of non-resident guarantee under the general permission for non-fund based facilities (such as Letters of Credit/guarantees/Letter of Undertaking (LoU)/Letter of Comfort (LoC)) entered into between two persons resident in India. The method of discharge of liability by the non-resident guarantor under the guarantee and the subsequent repayment of the liability by the principal debtor would continue, as hitherto, as detailed in A.P. (DIR Series) Circular No. 28 dated March 30, 2001.

It has also been decided to introduce a reporting format to capture such guarantees issued and invoked. Authorised Dealer Category-I banks are required to furnish such details by all its branches, in a consolidated statement, during the quarter, as per the format in Annex to the Chief General Manager, Foreign Exchange Department, ECB Division, Reserve Bank of India, Central Office Building, 11th floor, Fort, Mumbai – 400 001 (and in MS-Excel file through email) so as to reach

the Department not later than 10th day of the following month.

The policy would be reviewed at an appropriate time based on the experience gained in this regard. The modifications to the policy will come into force from the date of this circular.

[A. P. (DIR Series) Circular No. 20 dated August 29, 2012]

8. Foreign investment by Qualified Foreign Investors (QFIs) – Hedging facilities

It has now been decided to allow QFIs to hedge their currency risk on account of their permissible investments (in equity and debt instruments), as per the details given in the Annex.

Necessary amendments to the Notification No. FEMA.25/RB-2000 dated May 3, 2000 [Foreign Exchange Management (Foreign Exchange Derivative Contracts) Regulations, 2000] are being notified separately

[A. P. (DIR Series) Circular No. 21 dated August 31, 2012]

9. Exim Bank's Line of Credit of USD 20 million to the Government of the Central African Republic

Export-Import Bank of India (Exim Bank) has concluded an Agreement dated March 19, 2012 with the Government of the Central African Republic, making available to the latter, a Line of Credit (LOC) of USD 20 million (USD twenty million) for financing eligible goods, services, machinery and equipment including consultancy services from India for the development of mining project in Central African Republic. The goods and services including consultancy services and equipment 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 sellers from India and the remaining 25 percent goods and services (other than consultancy services) may be procured by the sellers for the purpose of Eligible Contract from outside India.

The Credit Agreement under the LOC is effective from August 22, 2012 and the date of execution of Agreement is March 19, 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 (March 18, 2018) from the execution date of the Credit Agreement in the case of supply contracts.

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.22
dated August 31, 2012]

10. Exim Bank's Line of Credit of USD 39.69 million to the Government of the Central African Republic

Export-Import Bank of India (Exim Bank) has concluded an Agreement dated March 19, 2012 with the Government of the Central African Republic, making available to the latter, a Line of Credit (LOC) of USD 39.69 million (USD thirty nine million six hundred and ninety thousand) for financing eligible goods, services, machinery and equipment including

consultancy services from India for two hydro-electric projects in Central African Republic. 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 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 sellers from India and the remaining 25 percent goods and services (other than consultancy services) may be procured by the sellers for the purpose of Eligible Contract from outside India.

The Credit Agreement under the LOC is effective from August 22, 2012 and the date of execution of Agreement is March 19, 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 (March 18, 2018) from the execution date of the Credit Agreement in the case of supply contracts.

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.23
dated August 31, 2012]