

## *Foreign Exchange Developments*

**December 2007**

### Exim Bank's Line of Credit (LOC) of USD 15 million to Eastern and Southern African Trade and Development Bank (PTA Bank)

Export-Import Bank of India (Exim Bank) has concluded an agreement dated October 16, 2007 with Eastern and Southern African Trade and Development Bank (PTA Bank), Kenya, making available to the latter a Line of Credit (LOC) for USD 15 million (USD 15 million only). The credit is available for financing export of eligible goods and services from India to any PTA bank member countries viz., Burundi, Comoros, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Malawi, Mauritius, Rwanda, Seychelles, Somalia, Sudan, Tanzania, Uganda, Zambia and Zimbabwe. The goods and services under the 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.

[A.P. (DIR Series) Circular No.19 dated December 12, 2007]

### Foreign Direct Investments (FDI) - Issue of shares under FDI and refund of advance remittances

In terms extant FEMA provisions (cf. Notification No. 20 dated May 3, 2000, as amended from time to time), a person resident outside India can purchase equity shares / compulsorily

convertible preference shares and compulsorily convertible debentures (equity instruments) issued by an Indian company under the FDI policy and the Indian company is allowed to receive the amount of consideration in advance towards issue of such equity instruments, subject to the terms and conditions laid down therein. In terms of Regulation 9(1) (A) of Schedule 1 *ibid*, the Indian company is required to report the receipt of the amount of consideration within thirty days of receipt of the inward remittance or the date of debit of the NRE / FCNR(B) account of the foreign investor with a AD category - I bank in India, to the Regional Office concerned of the Reserve Bank, in accordance with the prescribed procedure. Further, general permission is available to Indian companies to refund the amounts received towards purchase of shares

The matter was reviewed in consultation with the Government of India and it has been decided that, with effect from November 29, 2007, the equity instruments should be issued within 180 days of the receipt of the inward remittance. In case, the equity instruments are not issued within 180 days from the date of receipt of the inward remittance or date of debit to the NRE/FCNR (B) account, the amount of consideration so received should be refunded immediately to the non-resident investor by outward remittance through normal banking channels or by credit to the NRE/FCNR (B) account, as the case may be. The AD Category - I

banks may allow such outward remittances after satisfying themselves with the bonafides of the transactions and that no part of the remittance represents interest on the funds received as advance. Non-compliance with the above provision would be reckoned as a contravention under FEMA and could attract penal provisions.

In exceptional cases, refund of the amount of consideration outstanding beyond a period of 180 days from the date of receipt may be considered by the Reserve Bank on the merits of the case. In all cases where, as on November 28, 2007, 180 days have elapsed since receipt of funds and the equity instruments have not been issued, the companies are required to approach the Reserve Bank with a definite action plan either for allotment of equity instruments or for refund of the advance, with full details, for specific approval. It is clarified that the advances against equity instruments may be received only where the FDI is allowed under the automatic route.

[A.P. (DIR Series) Circular No. 20 dated December 14, 2007]

### Exim Bank's Line of Credit of USD 45 million to the Government of the Republic of Mali for Electricity Transmission and Distribution Project

Export-Import Bank of India (Exim Bank) has concluded an Agreement dated August 14, 2007 with the

Government of the Republic of Mali, making available to the latter, a Line of Credit (LOC) of USD 45 million (USD Forty five million only) for financing exports of eligible goods and services including consultancy services from India for electricity transmission and distribution project from Côte d'Ivoire to Mali. The goods and services for export under this Agreement are those which are eligible for export under the Foreign Trade Policy of the Government of India. Out of the total credit by Exim Bank under this Agreement, the goods and services of the value of at least 85 per cent of the contract price shall be supplied by the seller from India.

[A.P. (DIR Series) Circular No. 21 dated December 19, 2007]

### Foreign Direct Investment by citizen / entity incorporated in Bangladesh

In terms of existing FEMA provisions (cf sub-regulation (1) of Regulation 5 of the Notification No. 20 dated May 3, 2000 as amended from time to time), a person resident outside India (other than a citizen of Bangladesh or Pakistan) or an entity incorporated outside India (other than an entity in Bangladesh or Pakistan), may purchase shares or convertible debentures of an Indian company under Foreign Direct Investment Scheme, subject to specified terms and conditions. The Regulations have been amended.

Accordingly, a person who is a citizen of Bangladesh or an entity incorporated in Bangladesh 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 to Notification No. FEMA 20 / 2000 -RB dated May 3, 2000 as amended from time to time.

[A.P. (DIR Series) Circular No. 22 dated December 19, 2007]

### Permission for Short selling of Equity Shares by SEBI registered FIIs

At present, SEBI registered FIIs / sub-accounts of FIIs are permitted to buy / sell equity shares / debentures of Indian companies. However, FIIs are not allowed to engage in short selling and are required to take delivery of securities purchased and give delivery of securities sold.

It has now been decided in consultation with Government of India and SEBI, to permit Foreign Institutional Investors (FIIs) registered with SEBI and sub-accounts of FIIs to short sell, lend and borrow equity shares of Indian companies. Short selling, lending and borrowing of equity shares of Indian companies shall be subject to such conditions as may be prescribed in that behalf by the Reserve Bank and the SEBI / other regulatory agencies from time to time. The facility is subject to certain terms and conditions.

[A.P. (DIR Series) Circular No. 23 dated December 31, 2007]