



RESERVE BANK OF INDIA
Foreign Exchange Department
Central Office
Mumbai - 400 001

RBI/2014-15/377

A.P. (DIR Series) Circular No. 55

January 01, 2015

To

All Authorised Dealer Category-I Banks

Madam/ Sir

Security for External Commercial Borrowings

Attention of Authorised Dealers Category-I (AD Category-I) banks is invited to Paragraphs 1 (A)(vii) and 1 (B) (vi) of [Annex to A P \(DIR Series\) Circular No. 5 dated August 1, 2005](#) and [A P \(DIR Series\) Circular No. 1 dated July 11, 2008](#) relating to creation of charge over securities for External Commercial Borrowings (ECB).

2. Under the extant ECB guidelines, the choice of security to be provided to the overseas lender / supplier for securing ECB is left to the borrower. With a view to liberalising, expanding the options of securities and consolidating various provisions related to creation of charge over securities for ECB at one place, it has been decided that AD Category-I banks may allow creation of charge on immovable assets, movable assets, financial securities and issue of corporate and / or personal guarantees in favour of overseas lender / security trustee, to secure the ECB to be raised / raised by the borrower, subject to satisfying themselves that:

(i) the underlying ECB is in compliance with the extant ECB guidelines, (ii) there exists a security clause in the Loan Agreement requiring the ECB borrower to create charge, in favour of overseas lender / security trustee, on immovable assets / movable assets / financial securities / issuance of corporate and / or personal guarantee, and (iii) No objection certificate, wherever necessary, from the existing lenders in India has been obtained.

3. Once aforesaid stipulations are met, the AD Category-I bank may permit creation of charge on immovable assets, movable assets, financial securities and issue of corporate and / or personal guarantees, during the currency of the ECB with security co-terminating with underlying ECB, subject to the following:

(a) Creation of Charge on immovable assets:

- i. Such security shall be subject to provisions contained in the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000.
- ii. The permission should not be construed as a permission to acquire immovable asset (property) in India, by the overseas lender / security trustee.
- iii. In the event of enforcement / invocation of the charge, the immovable asset / property will have to be sold only to a person resident in India and the sale proceeds shall be repatriated to liquidate the outstanding ECB.

(b) Creation of Charge on Movable Assets

In the event of enforcement / invocation of the charge, the claim of the lender, whether the lender takes over the movable asset or otherwise, will be restricted to the outstanding claim against the ECB. Encumbered movable assets may also be taken out of the country.

(c) Creation of Charge over Financial Securities

- i. Pledge of shares of the borrowing company held by the promoters as well as in domestic associate companies of the borrower will be permitted. Pledge on other financial securities, viz. bonds and debentures, Government Securities, Government Savings Certificates, deposit receipts of securities and units of the Unit Trust of India or of any mutual funds, standing in the name of ECB borrower/promoter, will also be permitted.
- ii. In addition, security interest over all current and future loan assets and all current assets including cash and cash equivalents, including Rupee accounts of the borrower with AD Category-I banks in India, standing in the name of the borrower/promoter, can be used as security for ECB. The Rupee accounts of the borrower/promoter can also be in the form of escrow arrangement or debt service reserve account.
- iii. In case of invocation of pledge, transfer of financial securities shall be in accordance with the extant FDI/FII policy including provisions relating to sectoral cap and pricing as applicable read with the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000.

(d) Issue of Corporate or Personal Guarantee

- i. A copy of Board Resolution for the issue of corporate guarantee for the company issuing such guarantee, specifying name of the officials authorised to execute such guarantees on behalf of the company or in individual capacity should be obtained.
 - ii. Specific requests from individuals to issue personal guarantee indicating details of the ECB should be obtained.
 - iii. Such security shall be subject to provisions contained in the Foreign Exchange Management (Guarantees) Regulations, 2000.
4. These amendments to the ECB guidelines shall come into force with immediate effect, subject to review from time to time. All other provisions related to raising of ECB remain unchanged.
5. AD Category – I banks may bring the contents of this Circular to the notice of their constituents and customers.
6. The directions contained in the Circular have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions / approvals required, if any, under any other law.

Yours faithfully

B P Kanungo
Principal Chief General Manager