RBI/2008-09/317
A. P. (DIR Series) Circular No. 39

December 08, 2008

To,

All Category - I Authorised Dealer Banks

Madam / Sir,

Buyback / Prepayment of Foreign Currency Convertible Bonds (FCCBs)

Attention of Authorised Dealer Category - I (AD Category - I) banks is invited to Regulation No. 21 of Part III and Schedule I to the Notification No. FEMA 120 /RB-2004 dated July 7, 2004, as amended from time to time, relating to FCCBs. Attention of AD Category - I banks is also invited to A. P. (DIR Series) Circular No.5 dated August 1, 2005, A. P. (DIR Series) Circular No.60 dated May 21, 2007, A. P. (DIR Series) Circular No. 4 dated August 7, 2007, A. P. (DIR Series) Circular No. 43 dated May 29, 2008, A.P. (DIR Series) No. 16 dated September 22, 2008, A. P. (DIR Series) Circular No.20 dated October 10, 2008 and A. P. (DIR Series) No. 26 dated October 22, 2008 relating to instructions / guidelines in respect of External Commercial Borrowings, which are also applicable, mutatis mutandis, to FCCBs.

2. Under the extant ECB Guidelines, AD Category - I banks are permitted to allow prepayment of ECB up to USD 500 million without prior approval of the Reserve Bank, subject to compliance with the stipulated minimum average maturity period as applicable to the loan. Further, existing ECB can be refinanced by raising a fresh ECB, subject to the conditions that the fresh ECB is raised at a lower all-in-cost and the outstanding maturity of the original ECB is maintained. The existing provisions for prepayment and refinancing will continue, as hitherto.

3. As announced in para 4 (v) of the Press Release 2008:2009/697 dated November 15, 2008, Reserve Bank has been considering proposals, under the approval route, from Indian companies for buyback of their FCCBs, provided the buyback is financed out of their foreign currency resources held in India or abroad and / or out of fresh external commercial borrowing (ECB) raised in conformity with the current ECB norms.

4. As announced in para 12 of the Press Release 2008-2009/842 dated December 6, 2008, the existing policy on the premature buyback of FCCBs has been reviewed and it has been decided to liberalise the procedure and consider applications for buyback of FCCBs by Indian companies, both under the automatic and approval routes, as detailed hereunder:

A. <u>Automatic Route:</u>

The designated AD Category - I banks may allow Indian companies to prematurely buyback FCCBs, subject to compliance with the terms and conditions set out hereunder :

i) the buyback value of the FCCB shall be at a minimum discount of 15 per cent on the book value;

ii) the funds used for the buyback shall be out of existing foreign currency funds held either in India (including funds held in EEFC account) or abroad and / or out of fresh ECB raised in conformity with the current ECB norms; and

iii) where the fresh ECB is co-terminus with the outstanding maturity of the original FCCB and is for less than three years, the all-in-cost ceiling should not exceed 6 months Libor plus 200 bps, as applicable to short term borrowings. In other cases, the all-in-cost for the relevant maturity of the ECB, as laid down in A. P. (DIR Series) No.26 dated October 22, 2008 shall apply.

B. <u>Approval Route</u>:

The Reserve Bank will consider proposals from Indian companies for buyback of FCCBs under the approval route, subject to compliance with the following conditions:

i) the buyback value of the FCCB shall be at a minimum discount of 25 per cent on the book value;

ii) the funds used for the buyback shall be out of internal accruals, to be evidenced by Statutory Auditor and designated AD Category – I bank's certificate; and

iii) the total amount of buyback shall not exceed USD 50 million of the redemption value, per company.

Applications complying with the above conditions may be submitted, together with the supporting documents, through the designated AD Category - I bank, to the Chief General Manager-in-Charge, Reserve Bank of India, Foreign Exchange Department, ECB Division, Central Office, 11th Floor, Central Office Building, Shahid Bhagat Singh Road, Mumbai-400 001, for necessary approval.

5. General Conditions

In addition to the conditions set out above, the following additional conditions shall be applicable for the proposals both under the automatic and approval routes:

(i) The FCCB should have been issued in compliance with the extant guidelines.

(ii) The FCCB should have been registered with the Reserve Bank; the LRN number obtained and ECB 2 returns submitted up to date.

(iii) No proceedings for contravention of FEMA are pending against the company.

(iv) The right for buyback is vested with the issuer of FCCBs. However, the actual buyback is subject to the consent of the bond holders.

(v) The FCCBs bought back / repurchased from the holders must be cancelled and should not be re-issued or re-sold.

(vi) The buyback will not have any effect on the bond holders not opting for the buyback or on the non-participating bond holders of companies opting for the buyback.

(vii) The Indian company shall open an escrow account with the branch or subsidiary of an Indian bank overseas or an international bank for buying back the FCCBs to ensure that the funds are used only for the buyback.

6. The existing requirement of submission of ECB 2 return will continue as hitherto. Further, on completion of the buyback, a report giving details of buyback, such as, the outstanding amount of FCCBs, book value of FCCBs bought back, rate at which FCCBs bought back, amount involved, and source/s of funds may be submitted, through the designated AD Category - I bank, to the Chief General Manager-in-Charge, Reserve Bank of India, Foreign Exchange Department, ECB Division, Central Office, 11th Floor, Central Office Building, Shahid Bhagat Singh Road, Mumbai-400 001.

7. This facility will come into force with immediate effect and the entire procedure of buyback should be completed by March 31, 2009.

8. AD Category - I banks may bring the contents of this circular to the notice of their constituents and customers concerned.

9. The directions contained in this circular have been issued under sections 10(4) and 11 (1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and is without prejudice to permissions / approvals, if any, required under any other law.

Yours faithfully,

(Salim Gangadharan)
Chief General Manager-in-Charge