

## Foreign Exchange Developments

### 1. Deferred Payment Protocols dated April 30, 1981 and December 23, 1985 between Government of India and erstwhile USSR

In terms of the A.P. (DIR Series) Circular No. 39 dated November 1, 2011, the Rupee value of the special currency basket was indicated as `69.09329 effective from September 20, 2011. A further revision took place on October 20, 2011 and accordingly, the Rupee value of the special currency basket was fixed at `71.668914 with effect from October 25, 2011.

[A.P. (DIR Series) Circular No. 53 dated December 2, 2011]

### 2. Deferred Payment Protocols dated April 30, 1981 and December 2, 1985 between Government of India and erstwhile USSR

In terms of the A.P. (DIR Series) Circular No. 53 dated December 2, 2011, the Rupee value of the special currency basket was indicated as `71.668914 effective from October 25, 2011. A further revision took place on November 23, 2011 and accordingly, the Rupee value of the special currency basket was fixed at `73.923372 with effect from November 28, 2011.

[A.P. (DIR Series) Circular No. 54 dated December 08, 2011]

### 3. Foreign Direct Investment (FDI) in India – Issue of Equity Shares under the FDI Scheme allowed under the Government route

In terms of the A.P. (DIR Series) Circular No. 74 dated June 30, 2011, issue of equity shares/preference shares under the Government route by conversion of import of capital goods,/machineries/equipments (including second-hand machineries) and pre-operative / pre-incorporation expenses (including payments of rent, etc.) was allowed subject to terms and conditions stated therein. Certain conditions in the aforesaid A.P.

(DIR Series) Circular have been amended. The amended conditions are given in the Annex. The amended conditions are given in the Annex.

[A.P. (DIR Series) Circular No. 55 dated December 09, 2011]

### 4. Amendment to the Foreign Direct Investment Scheme

In terms of Schedule 1 of the Notification No. FEMA 20/2000-RB dated May 3, 2000, *ibid*, Foreign Direct Investment (FDI) up to 100 per cent is permitted in pharmaceuticals sector under the automatic route of the FDI Scheme. The extant FDI policy for pharmaceuticals sector was since reviewed and it was decided as under:

- (i) FDI, up to 100 per cent, under the automatic route, would continue to be permitted for green field investments in the pharmaceuticals sector.
- (ii) FDI, up to 100 per cent, would be permitted for brownfield investment (*i.e.*, investments in existing companies), in the pharmaceutical sector, under the Government approval route.

[A.P. (DIR Series) Circular No. 56 dated December 09, 2011]

### 5. Foreign Exchange Management Act, 1999 (FEMA) Foreign Exchange (Compounding Proceedings) Rules, 2000 (the Rules) – Compounding of Contraventions under FEMA, 1999

As a measure of customer service and in order to facilitate the operational convenience, it was decided to delegate the powers to the Regional Offices of the Reserve Bank of India mentioned below to compound the contraventions of FEMA involving (i) delay in reporting of inward remittance, (ii) delay in filing of form FC-GPR after allotment of shares and (iii) delay in issue of shares beyond 180 days (*viz.*, paragraphs 9(1)(A), 9(1)(B) and 8, respectively, of the Schedule

I 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 and as amended from time to time:

a) *Paragraphs 9 (1) (A) and 9 (1) (B) of Schedule I to FEMA 20/2000-RB dated May 3, 2000 -*

Bhopal, Bhubaneswar, Chandigarh, Guwahati, Jaipur, Jammu, Kanpur, Kochi, Patna and Panaji for amount of contravention below Rupees Ten Million only ( ₹ 1,00,00,000/-).

b) *Paragraphs 9 (1) (A), 9 (1) (B) and 8 of Schedule I to FEMA 20/2000-RB dated May 3, 2000 -*

Ahmedabad, Bangalore, Chennai, Hyderabad, Kolkata, Mumbai and New Delhi for amount of contravention without any limit.

In terms of sub-rule (1) to Rule 8 of Foreign Exchange (Compounding Proceedings) Rules, 2000, the Compounding Authority may call for any information, record or any other documents relevant to the compounding proceedings. It has been observed that there is no uniformity in submitting the required details with supporting documents along with the compounding application. This results in avoidable correspondence between Reserve Bank and the applicant. It has, therefore been decided that along with the application in the prescribed format, the applicant may also furnish the details as per the Annexes enclosed with the circular relating to Foreign Direct Investment, External Commercial Borrowings, Overseas Direct Investment and Branch Office/Liaison Office, as applicable, along with an undertaking that they are not under investigation of any agency such as DOE, CBI, etc., a copy of the Memorandum of Association and latest audited balance sheet while applying for compounding of contraventions under FEMA, 1999.

[A.P. (DIR Series) Circular No. 57 dated December 13, 2011]

## 6. Risk Management and Inter-Bank Dealings

Keeping in view the developments in the foreign exchange market, it has been decided to implement

the following measures **with immediate effect** until further review.

- i. Under contracted exposures, forward contracts, involving the Rupee as one of the currencies, booked by residents to hedge current account transactions, regardless of the tenor, and to hedge capital account transactions, falling due within one year, were allowed to be cancelled and rebooked. It has now been decided to withdraw the above facility. Forward contracts booked by residents irrespective of the type and tenor of the underlying exposure, once cancelled, cannot be rebooked.
- ii. Under probable exposures based on past performance residents were allowed to hedge currency risk on the basis of a declaration of an exposure and based on past performance up to the average of the previous three financial years' (April to March) actual import/export turnover or the previous year's actual import/export turnover, whichever is higher. Further, contracts booked in excess of 75 per cent of the eligible limit were to be on deliverable basis and could not be cancelled.

It has now been decided that

- a. For importers availing of the above past performance facility, the facility stands reduced to 25 per cent of the limit as computed above, *i.e.*, 25 per cent of the average of the previous three financial years' (April to March) actual import/export turnover or the previous year's actual import/export turnover, whichever is higher. In case of importers who have already utilised in excess of the revised /reduced limit, no further bookings may be allowed under this facility.
- b. All forward contracts booked under this facility by both exporters and importers hence forth will be on fully deliverable basis. In case of cancellations, exchange gain, if any, should not be passed on to the customer.
- iii. All cash/tom/spot transactions by the Authorised Dealers on behalf of clients will be undertaken for actual remittances/delivery only and cannot be cancelled/cash settled.

- iv. Foreign Institutional Investors (FIIs) are currently allowed to hedge currency risk on the market value of entire investment in equity and/or debt in India as on a particular date. The contracts once cancelled cannot be rebooked except to the extent of 10 per cent of the market value of the portfolio as at the beginning of the financial year. The forward contracts may, however, be rolled over on or before maturity. It has now been decided that henceforth forward contracts booked by the FIIs, once cancelled, cannot be rebooked. The forward contracts may, however, be rolled over on or before maturity.
- v. The Board of Directors of Authorised Dealers were allowed to fix suitable limits for various Treasury functions with net overnight open exchange position and aggregate gap limits required to be approved by the Reserve Bank. It has now been decided that
- Net Overnight Open Position Limit (NOOPL) of Authorised Dealers would be reduced across the board. Revised limits in respect of individual banks are being advised to the Authorised Dealers separately.
  - Intra-day open position/daylight limit of Authorised Dealers should not exceed the existing NOOPL approved by the Reserve Bank.
  - The above arrangement would be reviewed on an ongoing basis keeping in view the evolving market conditions.

[A.P. (DIR Series) Circular No. 58 dated December 15, 2011]

## 7. External Commercial Borrowings (ECB) for Micro Finance Institutions (MFIs) and Non-Government Organisations (NGOs)-engaged in Micro Finance Activities under Automatic Route

Considering the specific needs of the micro finance sector, the existing ECB policy has been reviewed in consultation with the Government of India and it has been decided that hence forth MFIs may be permitted

to raise ECB up to USD 10 million or equivalent during a financial year for permitted end-uses, under the Automatic Route.

### (i) Eligible Borrower:

It has also been decided that Non-Government Organizations (NGOs) engaged in micro finance activities can avail of ECB up to US\$ 10 million or equivalent per financial year under the automatic route as against the present limit of US\$ 5 million or equivalent per financial year.

All other ECB parameters such as minimum average maturity, all-in-cost ceilings, restrictions on issuance of guarantee, choice of security, parking of ECB proceeds, prepayment, refinancing of ECB, reporting arrangements under the Automatic Route should be complied with by MFIs/NGOs availing ECBs. The designated AD has to certify the status of the borrower as eligible and involved in micro finance and ensure at the time of draw down that the forex exposure of the borrower is fully hedged.

These amendments to ECB policy will come into force with immediate effect and the framework with respect to MFIs will be subject to review after one year.

Necessary amendments to the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 dated May 3, 2000 are being issued separately, wherever necessary.

[A.P. (DIR Series) Circular No. 59 dated December 19, 2011]

## 8. 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

In view of the problems faced by the money changers while obtaining documents towards address

proof from foreign tourists, it has been decided to amend certain instructions contained in the aforementioned Part. All the other instructions contained in the A.P. (DIR Series) Circular No. 17 [A.P. (FL/RL Series) Circular No. 04] dated November 27, 2009 shall remain unchanged.

**Annex**

*Customer Identification Procedure*

*Features to be verified and documents that may be obtained from customers*

Extant Guidelines		Revised Guidelines	
Features	Documents	Features	Documents
<p><b>Transactions With Individuals</b></p> <ul style="list-style-type: none"> <li>- Legal name and any other names used</li> <li>- Correct permanent address</li> </ul>	<p>(i) Passport (ii) PAN card (iii) Voter's Identity Card (iv) Driving licence (v) Identity card (subject to the AP's satisfaction) (vi) Letter from a recognized public authority or public servant verifying the identity and residence of the customer to the satisfaction of the AP.</p> <p>(i) Telephone bill (ii) Bank account statement (iii) Letter from any recognized public authority (iv) Electricity bill (v) Ration card (vi) Letter from employer (subject to satisfaction of the AP).</p> <p>(any one of the documents, which provides customer information to the satisfaction of the AP will suffice).</p>	<p><b>Transactions With Individuals</b></p> <ul style="list-style-type: none"> <li>- Legal name and any other names used</li> <li>- Correct permanent address</li> </ul>	<p>i) Passport (ii) PAN card (iii) Voter's Identity Card (iv) Driving licence (v) Identity card (subject to the AP's satisfaction) (vi) Letter from a recognized public authority or public servant verifying the identity and residence of the customer to the satisfaction of the AP.</p> <p>(i) Telephone bill (ii) Bank account statement (iii) Letter from any recognized public authority (iv) Electricity bill (v) Ration card (vi) Letter from employer (subject to satisfaction of the AP).</p> <p>(any one of the documents, which provides customer information to the satisfaction of the AP will suffice).</p>

[A.P. (DIR Series) Circular No. 60 dated December 22, 2011]

**9. Exim Bank's Line of Credit of USD 40 million to the Government of the Republic of Maldives**

Export-Import Bank of India (Exim Bank) has concluded an Agreement dated August 12, 2011 with the Government of the Republic of Maldives, making available to the latter, a Line of Credit (LOC) of USD 40 million (USD forty million) for financing eligible goods, services, machinery and equipment including

consultancy services to be exported from India for the purpose of financing the construction of 500 housing units in Maldives.

The Credit Agreement under the LOC is effective from October 25, 2011 and the date of execution of Agreement is August 12, 2011. 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 (August 11, 2017) 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 utilize 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 realization of full payment of contract value subject to compliance with the prevailing instructions for payment of agency commission.

[A.P. (DIR Series) Circular No. 61 dated December 27, 2011]

## 10. Exim Bank's Line of Credit of USD 168 million to the Government of the Democratic Republic of Congo

Export-Import Bank of India (Exim Bank) has concluded an Agreement dated July 11, 2011 with the Government of the Democratic Republic of Congo, making available to the latter, a Line of Credit (LOC) of US\$ 168 million (US\$ one hundred sixty eight million) for financing eligible goods, services, machinery and equipment including consultancy services to be exported from India for the purpose of financing Ketende Hydro-electric Project in Congo.

The Credit Agreement under the LOC is effective from October 20, 2011 and the date of execution of Agreement is July 11, 2011. 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 (July 10, 2017) 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 utilize 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 realization of full payment of contract value subject to compliance with the prevailing instructions for payment of agency commission.

[A.P. (DIR Series) Circular No. 62 dated December 27, 2011]

## 11. External Commercial Borrowings (ECB) denominated in Indian Rupees (INR) – Hedging Facilities for Non-Resident Entities

It has been decided to allow non-residents to hedge their currency risk in respect of ECBs denominated in Indian Rupees, with AD Category I banks in India, as per the details given in the Annex.

### *Annex*

#### *ECBs denominated in INR – Hedging Facilities for Non-Resident Entities*

**Purpose:** To hedge the currency risk arising out of ECBs designated in INR with AD Category- I banks in India.

**Products:** Forward foreign exchange contracts with rupee as one of the currencies, foreign currency-INR options and foreign currency-INR swaps.

#### *Operational Guidelines, Terms and Conditions:*

- The foreign equity holder / overseas organisation or individual approaches the AD bank in India with a request for forward cover in respect of underlying transaction for which he needs to furnish appropriate documentation (scanned copies would be acceptable), on a pre-deal basis to enable the AD bank in India to satisfy itself that there is an underlying ECB transaction, and details of his overseas banker, address, etc. The following undertakings also need to be taken from the customer -
  - a. That the same underlying exposure has not been hedged with any other AD Category- I bank/s in India.
  - b. If the underlying exposure is cancelled, the customer will cancel the hedge contract immediately.

## OTHER ITEMS

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- The amount and tenor of the hedge should not exceed that of the underlying transaction and should be in consonance with the extant regulations regarding tenor of payment/realisation of the proceeds.
- On due date, settlement is to be done through the correspondent bank's Vostro or the AD bank's Nostro accounts. AD banks in India may release funds to the beneficiaries only after sighting funds in Nostro/Vostro accounts.
- The contracts, once cancelled, cannot be rebooked.
- The contracts may, however, be rolled over on or before maturity subject to maturity of the underlying exposure.
- On cancellation of the contracts, gains may be passed on to the customer subject to the customer providing a declaration that he is not going to rebook the contract or that the contract has been cancelled on account of cancellation of the underlying exposure.

[A.P. (DIR Series) Circular No. 63  
dated December 29, 2011]