

Foreign Exchange Developments

1. Opening of Diamond Dollar Accounts (DDAs)

In terms of A.P. (DIR Series) Circular No. 51 dated February 13, 2009 powers were delegated to AD Category-I banks to open and maintain DDAs by eligible firms and companies subject to certain terms and conditions. It has now been decided that AD Category - I banks should submit a statement giving the data on the DDA balances maintained by them on a fortnightly basis as per format annexed with this A.P. (DIR Series) Circular, within seven days of close of the fortnight to which it relates, to the Chief General Manager-in-Charge, Foreign Exchange Department, Reserve Bank of India, Trade Division, 5th Floor, Amar Building, Mumbai – 400001.

[A.P. (DIR Series) Circular No.73
dated January 31, 2012]

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

In terms of A.P. (DIR Series) Circular No. 54 dated December 8, 2011, the Rupee value of the Special Currency Basket was indicated as ₹ 73.923372 effective from November 28, 2011. A further revision has taken place on January 17, 2012 and accordingly, the Rupee value of the Special Currency Basket has been fixed at ₹ 71.456679 with effect from January 20, 2012.

[A.P. (DIR Series) Circular No.74
dated February 1, 2012]

3. External Commercial Borrowings – Simplification of procedure

As a measure of simplification of the existing procedures, it was decided to delegate powers to the designated AD category-I banks to approve the following requests from the ECB borrowers, subject to specified conditions:

a) Reduction in amount of ECB – The designated AD Category-I bank may approve

requests from ECB borrowers for reduction in loan amount in respect of ECBs availed under the automatic route, subject to conditions.

b) Changes/modifications in the drawdown schedule when original average maturity period is not maintained – designated AD

Category-I bank may approve requests from ECB borrowers for changes/modifications in the drawdown schedule resulting in the original average maturity period undergoing change in respect of ECBs availed both under the automatic and approval routes, subject to conditions.

c) Reduction in the all-in-cost of ECB – The designated AD Category-I bank may approve requests from ECB borrowers for reduction in all-in-cost, in respect of ECBs availed both under the automatic and approval routes, subject to conditions.

[A.P. (DIR Series) Circular No.75
dated February 7, 2012]

4. Clarification - Establishment of Project Offices in India by Foreign Entities – General Permission

In terms of Regulation 4 of Notification No.FEMA 22 /2000-RB dated May 3, 2000, viz., Foreign Exchange Management (Establishment in India of Branch or Office or other Place of Business) Regulations, 2000, as amended from time to time, no person, being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran or China, shall establish in India, a branch office or a liaison office or a project office or any other place of business by whatever name called, without the prior permission of the Reserve Bank. Further, A.P. (DIR Series) Circular No. 37 dated November 15, 2003 provides the guidelines regarding general permission to a foreign entity for setting up a Project office in India, subject to certain conditions.

It is clarified that the general permission accorded in terms of the November 15, 2003 guidelines is subject to the adherence to the provisions of Regulation 4 of

Notification No.FEMA 22/2000-RB dated 3rd May 2000, *ibid*, alongwith their specified conditions.

[A.P. (DIR Series) Circular No.76
dated February 9, 2012]

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

The A.P.(DIR Series) Circular Nos.21 and 23 dated September 19, 2011 specified the risks arising from the deficiencies in AML/CFT regime of certain jurisdictions. The Financial Action Task Force (FATF) has issued a further Statement on October 28, 2011 on the subject [copy enclosed with the A.P. (DIR Series) Circular]. Authorised Persons were 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.

[A.P. (DIR Series) Circular No.77
dated February 15, 2012]

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

The A.P.(DIR Series) Circular Nos.22 and 24 dated September 19, 2011 specified the risks arising from the deficiencies in AML/CFT regime of certain jurisdictions. The Financial Action Task Force (FATF) has issued a further Statement on October 28, 2011 on the subject [copy enclosed with the A.P. (DIR Series) Circular]. Authorised Persons (Indian Agents) were 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.

[A.P. (DIR Series) Circular No.78
dated February 15, 2012]

7. Clarification - Purchase of Immovable Property in India – Reporting requirement

In terms of Regulation 5 of Notification No. FEMA 21/2000-RB *viz.*, Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India), Regulations, 2000 dated May 3, 2000, as amended from time to time, when a person resident outside India, who has established in India in accordance with the Foreign Exchange Management (Establishment in India of Branch or Office or other Place of Business) Regulations, 2000, a branch, office or other place of business, excluding a liaison office, acquires any immovable property in India in accordance with the provision of said regulation, the said person has to file with the Reserve Bank a declaration in the form IPI annexed to those regulations, not later than ninety days from the date of such acquisition. As the form is required to be submitted by such persons only, the form is suitably amended to reflect the position.

It was clarified that the extant regulations do not prescribe any reporting requirements for transactions where a person resident outside India who is a citizen of India or a Person of Indian Origin (PIO) as defined in Regulation 2(c) of Notification No. FEMA 21/2000-RB, *ibid*, acquire/s immovable property in India in accordance with the said provisions of the aforesaid Notification. Form IPI has been, accordingly, amended for greater clarity.

[A.P. (DIR Series) Circular No.79
dated February 15, 2012]

8. Export of Goods and Services- Simplification and Revision of Softex Procedure

In terms of Regulation 6 of the Notification No.FEMA 23/2000-RB dated May 3, 2000 *viz.*, Foreign Exchange Management (Export of Goods and Services) Regulations, 2000, as amended by the Notification No.FEMA 36/2001-RB dated February 2, 2001, which designated officials of the Ministry of Information Technology, Government of India at the Software Technology Parks of India (STPIs) or at Free Trade Zones (FTZs) or Export Processing Zones (EPZs) or Special

Economic Zones (SEZs), had been authorised to certify exports declared through SOFTEX Forms.

Considering the spurt in the volume of software exports from India in recent times, the complexity of work contracts involved, the voluminous nature of contract agreements and the duration involved in execution of each contract as well as the time-consuming process involved in the certification of SOFTEX forms, the matter was revisited and a revised procedure was given below, has now been finalised in consultation with the stakeholders involved.

[A.P. (DIR Series) Circular No.80
dated February 15, 2012]

9. Export of Goods and Services – Receipt of advance payment for export of goods Involving shipment (manufacture and ship) beyond one year

In terms of sub-regulation (2) of Regulation 16 of the Foreign Exchange Management (Export of Goods and Services) Regulations, 2000, notified vide Notification No.FEMA.23/RB-2000, dated 3rd May 2000, as amended from time to time, prior approval of the Reserve Bank is required to be obtained by an exporter for receipt of advance where the export agreement provides for shipment of goods extending beyond the period of one year from the date of receipt of advance payment. With a view to liberalizing the procedure, it has been decided to permit AD Category- I banks to allow exporters to receive advance payment for export of goods which would take more than one year to manufacture and ship and where the 'export agreement' provides for shipment of goods extending beyond the period of one year from the date of receipt of advance payment subject to conditions.

[A.P. (DIR Series) Circular No.81
dated February 21, 2012]

10. Release of Foreign Exchange for Imports – Further Liberalisation

In terms of A.P.(DIR Series) Circular No. 106 dated June 19, 2003 applications by persons, firms and companies for making payments, exceeding US\$ 500 or its

equivalent towards imports into India must be made in Form A-1.

Based on suggestions received from the various stake holders, the said limit has been reviewed and it has been decided as a measure of liberalization to raise the above limit for foreign exchange remittance towards imports without any documentation formalities, from US\$ 500 or its equivalent to US\$ 5,000 or its equivalent, with immediate effect.

It is clarified that the ADs need not obtain any document, including Form A-1, except a simple letter from the applicant containing the basic information viz., the name and the address of the applicant, name and address of the beneficiary, amount to be remitted and the purpose of remittance, as long as the exchange being purchased is for a current account transaction (and is not included in the Schedules I and II of the Foreign Exchange Management (Current Account Transactions) Rules, 2000 framed by Government of India vide Notification No. G.S.R.381 (E) dated May 3, 2000, as amended from time to time, the amount does not exceed US\$ 5000 or its equivalent and the payment is made by a cheque drawn on the applicant's bank account or by a Demand Draft.

[A.P. (DIR Series) Circular No.82
dated February 21, 2012]

11. Import of Gold on Loan Basis- Tenor of Loan and Opening of Stand - By Letter of Credit

In terms of para 4A 23.2 and para 4A 23.3 of the Hand Book of Procedures (HBP) Vol. I of the Foreign Trade Policy (FTP) 2009-14, 'the export has to be completed within a maximum period of 90 days from the date of release of gold on loan basis', and that, 'the exporter shall have flexibility to fix the price and repay gold loan within 180 days from date of export'. Accordingly, the maximum tenor of gold loan becomes 270 days at present (*i.e.* 90 days for manufacture and export + 180 days for fixing the price and repayment) as per FTP 2009-14.

AD Category-I Banks may, accordingly, note to comply that (i) the maximum period of gold loan shall be as per the Foreign Trade Policy 2009-14 or as notified

by the Government of India from time to time, in this regard and (ii) the tenor of SBLC, for import of gold on loan basis, where ever required, should also be in line with the tenor of gold loan.

[A.P. (DIR Series) Circular No.83
dated February 27, 2012]

12. Import of Gold on Loan Basis- Tenor of Loan and Opening of Stand - By Letter of Credit

The following changes shall be effected in reporting of R>Returns from the next financial year (*i.e.*, transactions taking place from April 1, 2012):

- i. The purpose codes for classification and reporting of foreign exchange transactions in FETERS should be as per the revised classification. Accordingly, all AD category-I banks are advised to report all foreign exchange transactions as per the revised purpose code list with effect from first fortnight of April 2012 as per the attached guidelines.
- ii. AD banks may indicate purpose codes for all foreign exchange transactions (including receipts under non-export transactions below ₹ 5 lakhs) under FETERS. The present system of reporting of non-export transactions below ₹ 5 lakhs (a) on a consolidated basis in BoP file and (b) submission of purpose-wise distribution of a sample of such small receipt transactions (as part of R-return in the URS file under FETERS), will be discontinued for transactions beyond March 31, 2012.
- iii. The amount field in all FETERS files will be increased to 15-digit format.
- iv. 6-digit port code will be used uniformly for reporting under FETERS.

[A.P. (DIR Series) Circular No.84
dated February 29, 2012]

13. External Commercial Borrowings (ECB) for Infrastructure facilities within National Manufacturing Investment Zone (NMIZ)

As per the extant guidelines, availing of ECB is permissible for the infrastructure sector, which is defined to include (i) power, (ii) telecommunication,

(iii) railways, (iv) road including bridges, (v) sea port and airport, (vi) industrial parks, (vii) urban infrastructure (water supply, sanitation and sewage projects), (viii) mining, refining and exploration and (ix) cold storage or cold room facility, including for farm level pre-cooling, for preservation or storage of agricultural and allied produce, marine products and meat. Developers of SEZ were also allowed to provide such infrastructure facilities within the SEZ.

Keeping in view the infrastructural needs of the proposed **National Manufacturing Investment Zones (NMIZs)**, it has now been decided to allow developers of NMIZ also to avail of ECB under the **"approval route"** for providing infrastructure facilities within the NMIZ, as indicated above.

[A.P. (DIR Series) Circular No.85
dated February 29, 2012]

14. 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- Assessment and Monitoring of Risk – Money Changing Activities

The Government of India had constituted a National Money Laundering / Financing of Terror Risk Assessment Committee to assess money laundering and terror financing risks, a national AML / CFT strategy and institutional framework for AML/CFT in India. Assessment of risk of Money Laundering/Financing of Terrorism helps both the competent authorities and the regulated entities in taking necessary steps for combating ML / FT adopting a risk-based approach. This helps in judicious and efficient allocation of resources and makes the AML/CFT regime more robust. The Committee has made recommendations regarding adoption of a risk-based approach, assessment of risk and putting in place a system which would use that assessment to take steps to effectively counter ML/FT. The recommendations of the Committee have since

been accepted by the Government of India and need to be implemented. Accordingly, APs should take steps to identify and assess their ML/TF risk for customers, countries and geographical areas as also for products/ services/ transactions/delivery channels, in addition to what has been prescribed in the aforesaid circular, referred to in paragraph 4 of the above-mentioned circular dated November 27, 2009. APs should have policies, controls and procedures, duly approved by their boards, in place to effectively manage and mitigate their risk adopting a risk-based approach as discussed above. As a corollary, APs would be required to adopt enhanced measures for products, services and customers with a medium or high risk rating.

APs may design risk parameters according to their activities for risk based transaction monitoring, which will help them in their own risk assessment.

[A.P. (DIR Series) Circular No.86
dated February 29, 2012]

15. 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 - Assessment and Monitoring of Risk - Cross Border Inward Remittance under Money Transfer Service Scheme

The Government of India had constituted a National Money Laundering/Financing of Terror Risk Assessment Committee to assess money laundering and terror financing risks, a national AML/CFT strategy

and institutional framework for AML/CFT in India. Assessment of risk of Money Laundering/Financing of Terrorism helps both the competent authorities and the regulated entities in taking necessary steps for combating ML/FT adopting a risk-based approach. This helps in judicious and efficient allocation of resources and makes the AML/CFT regime more robust. The Committee has made recommendations regarding adoption of a risk-based approach, assessment of risk and putting in place a system which would use that assessment to take steps to effectively counter ML/FT. The recommendations of the Committee have since been accepted by the Government of India and need to be implemented.

Accordingly, APs (Indian Agents) should take steps to identify and assess their ML/TF risk for customers, countries and geographical areas as also for products/ services/ transactions/delivery channels, in addition to what has been prescribed in the aforesaid circular, referred to in paragraph 5 of the above-mentioned Circular dated November 27, 2009. APs (Indian Agents) should have policies, controls and procedures, duly approved by their boards, in place to effectively manage and mitigate their risk adopting a risk-based approach as discussed above. As a corollary, APs (Indian Agents) would be required to adopt enhanced measures for products, services and customers with a medium or high risk rating.

APs (Indian Agents) may design risk parameters according to their activities for risk based transaction monitoring, which will help them in their own risk assessment.

[A.P. (DIR Series) Circular No.87
dated February 29, 2012]