

**RESERVE BANK OF INDIA
(FOREIGN EXCHANGE DEPARTMENT)
CENTRAL OFFICE
MUMBAI**

Notification No. FEMA .126/2004-RB

Dated December 13, 2004

**Foreign Exchange Management
(Borrowing or Lending in Foreign Exchange)
(Second Amendment) Regulations, 2004**

In exercise of the powers conferred by clause (d) of sub-section (3) of Section 6, and sub section (2) of Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), and in partial modification of its Notification No. FEMA 3/2000-RB dated May 3, 2000, the Reserve Bank of India makes the following regulations to amend the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, as amended from time to time, namely :-

2. Short title and commencement

- (a) The Regulations may be called the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) (Second Amendment) Regulations, 2004
- (b) They shall come into force from the date specified hereunder.

3. Amendment of Regulation 6

In the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, (hereinafter referred to as 'the Principal Regulations')

(a) in Regulation 6,

(i) for the Heading and sub-regulation (1), the following heading and sub-regulations shall be substituted, namely :-

"6. Other borrowings in foreign exchange under Automatic Route or with prior approval of Reserve Bank of India under the Approval Route or as Trade Credit

- (1) A person resident in India, other than a branch or office in India owned or controlled by a person resident outside India, may raise in accordance with the provisions of the Automatic Route Scheme specified in Schedule I, foreign currency loans of the nature and for the purposes as specified in that Schedule; provided that this shall be deemed to have come into force with effect from February 1, 2004 except in relation to item 1(iv)(A)(c) of Schedule I which shall be deemed to have come into force with effect from February 23, 2004.
- (2) A person resident in India who desires to raise foreign currency loans of the nature or for the purposes as specified in Schedule II and who satisfies the eligibility and other conditions specified in that Schedule, may apply to the Reserve Bank for prior approval to raise such loans; provided that this shall be deemed to have come into force with effect from February 1, 2004 except in relation to item 3(iii)(A)(c) of Schedule II which shall be deemed to have come into force with effect from February 23, 2004.
- (3) Trade Credit not exceeding USD 20 million per import transaction shall be raised by borrowings subject to the terms specified in Schedule III hereto; provided that this shall be deemed to have come into force with effect from April 17, 2004."

- (ii) The existing sub-regulation (2) shall be renumbered as (4) .
- (iii) In the renumbered sub-regulation (4) the words “Where prior approval is required” may be added in the beginning.
- (iv) The existing sub-regulation (3) shall be substituted by “The Reserve Bank may grant its approval to any other foreign currency loan proposed to be raised by a person resident in India, which falls outside the scope of Schedules I, II and III, subject to such terms and conditions as it may consider necessary.” This sub-regulation shall be renumbered as sub-regulation (5).

4. Amendment to Schedule

The existing 'Schedule' attached to the Regulations shall be replaced by Schedule I, Schedule II and Schedule III.

F. R. Joseph
Chief General Manager

Foot Note : The Principal Regulations were published in the Official Gazette vide G. S. R. No. 386(E) dated May 5, 2000 in Part II, Section 3, Sub-section (i) and subsequently amended vide

- (a) G.S.R.No.674(E) dated August 25, 2000
- (b) G.S.R.No.476(E) dated July 8, 2002
- (c) G.S.R.No.854(E) dated December 31, 2002
- (d) G.S.R.No.531(E) dated July 9, 2003
- (e) G.S.R.No.533(E) dated July 9, 2003, and
- (f) G.S.R.No.208(E) dated March 23, 2004

<p>Published in the Official Gazette of Government of India - Extraordinary - Part-II, Section 3, Sub-Section (i) dated 22.12.2004 - G.S.R.No.825(E)</p>

SCHEDULE I
[(See Regulation 6(1))]

Borrowings in Foreign Exchange under the Automatic Route

(1) Borrowing in Foreign Exchange up to US\$ 500 Million or its equivalent

The borrowing in foreign exchange by a person resident in India under the Automatic Route is subject to the terms and conditions set out in this schedule.

i) Eligibility

Any corporate registered under the Companies Act, 1956 shall be eligible to borrow in terms of this Schedule. However, financial intermediaries (such as banks, financial institutions (FIs), housing financing companies, Non-Banking Finance Companies, Trusts, Non-Profit making organisations (NPOs), Micro Finance Institutions, proprietorship / partnership concerns and individuals are not eligible to borrow under the Automatic Route.

ii) Amount

The borrowing in foreign exchange under the Automatic Route whether raised in tranches or otherwise shall not exceed US\$ 500 Million in any one financial year (April-March).

iii) Lenders

The borrowings in foreign currency by way of issue of bonds, floating rate notes or other debt instruments by whatever name called may be made from -

- a) International bank or export credit agency or international capital market or
- b) Multilateral financial institutions, namely, IFC, ADB, CDC etc., or
- c) Foreign collaborator or foreign equity holder as specified by the Reserve Bank or
- d) Supplier of equipments provided the amount of loan raised does not exceed the total cost of the equipment being supplied by the lender or
- e) Any other eligible entity as prescribed by the Reserve Bank in consultation with Government of India

iv) Purpose (End-use)

A) Borrowing in foreign exchange in terms of this Schedule may be for any of the following purposes, namely :-

- a) for investment (such as import of capital goods, new projects, modernisation / expansion of existing production units) in real sector - industrial sector including small and medium enterprises (SME) and infrastructure sector - in India.

Explanation : The following sectors will qualify as infrastructure sectors, namely:.

Power , Telecommunications, Railways, Roads including bridges, Ports, Industrial Parks and Urban infrastructure (water supply, sanitation and sewage projects),

- b) for first stage acquisition of shares in the disinvestment process and also in the mandatory second stage offer to the public under the Government's disinvestment programme of PSU shares ,
- c) for direct investment in overseas Joint Ventures (JV)/Wholly Owned Subsidiaries (WOS) subject to the existing guidelines on Indian Direct Investment in JV/WOS abroad.

- B) Other than the purposes specified hereinabove, the borrowings shall not be utilised for any other purpose including the following purposes, namely:

On-lending, investment in capital (stock) market, investment in real estate business, working capital requirements, general corporate purpose, and repayment of Rupee loans

Note - For the purpose of this clause, real estate business shall not include development of integrated township as defined by the Government of India, Ministry of Commerce and Industry, Department of Industrial Policy and Promotion, SIA (FC Division), Press Note 3(2002 Series) dated January 4, 2002.

v) **Maturity**

The maturity of the borrowings in foreign exchange shall be as under :

Amount -----	Minimum Average Maturity -----
i) Up to US\$ 20 Million or equivalent	Not less than 3 years.
ii) Exceeding US\$ 20 Million and upto US\$ 500 Million or equivalent	Not less than 5 years

Note - Borrowing up to US\$ 20 Million can have call/put option provided the minimum average maturity of 3 years as prescribed above is complied with before exercising call/put option.

vi) **All-in-cost ceilings**

The all-in-cost ceilings for the borrowing in foreign exchange shall be specified by the Reserve Bank from time to time

vii) **Security**

The borrower shall be at liberty to provide security to the lender / suppliers, provided that-

- a) Where the security is in form of immovable property in India or shares of a company in India, it shall be subject to Regulation 8 of Notification No.FEMA.21/ 2000-RB dated May 3, 2000 and Regulation 3 of Notification No.FEMA.20/2000-RB dated May 3, 2000, respectively.

b) **Guarantee**

Banks, financial institutions and Non-Banking Finance Companies shall not provide (issue) guarantee or Letter of Comfort or Standby Letter of Credit in favour of overseas lender on behalf of their constituents for their borrowings in foreign exchange.

viii) **Prepayment**

Notwithstanding the provisions of clause (v) above, prepayment of outstanding foreign currency loan may be made as per the directives issued by the Reserve Bank from time to time.

ix) **Parking of loan amount abroad**

The proceeds of borrowings in foreign exchange shall be parked abroad until actual requirement in India.

x) **Loan Agreement**

The loan agreement entered into by the borrower with the overseas lender shall strictly conform with these Regulations.. The procedure for obtaining loan registration number would be prescribed by the Reserve Bank.

xi) Drawal of Loan

Draw-downs of borrowing in foreign exchange shall be made strictly in accordance with the terms of the loan agreement only after obtaining the loan registration number from the Reserve Bank.

xii) Reporting

The borrower shall adhere to the reporting procedure as specified by the Reserve Bank from time to time.

xiii) Debt Servicing

The designated Authorised Dealer (AD) shall have the general permission to make remittances of principal, interest and other charges in conformity with the guidelines on borrowing in foreign exchange from overseas, issued by Central Government / the Reserve Bank from time to time.

2. Refinancing of existing borrowing in foreign exchange

(i) Refinancing of outstanding amounts of loans raised in foreign exchange in accordance with the Act or the Rules and Regulations made thereunder, may be made by making fresh borrowing in foreign exchange in accordance with this Schedule provided that there is reduction in cost of borrowing and the outstanding maturity of the original borrowing is not reduced.

(ii) Provisions of sub-paragraphs (ii), and (v) of paragraph 1 shall not apply to the borrowings made under Clause 2 (i),

**SCHEDULE II
[See Regulation 6(2)]**

**Borrowings in Foreign Exchange
under the Approval Route**

(1) The borrowing in foreign currency (other than the borrowings under Schedule I) by a person resident in India may be made under any of the types set out in this Schedule.

(2) The application for the approval of the Reserve Bank under Regulation 6(2) for borrowing under any of the types where its approval is required shall be made in the Form as specified by the Reserve Bank from time to time.

(3) The borrowing in foreign exchange by a person resident in India under the Approval Route is subject to the terms and conditions set out in this schedule.

(i) Eligibility

The following entities shall be eligible to apply for foreign currency borrowings under the Approval Route -

- a) Any corporate registered under the Company's Act, 1956.
- b) Financial institutions dealing exclusively with infrastructure or export finance such as IDFC, IL& FS, Power Finance Corporation, Power Trading Corporation, IRCON and Exim Bank.
- c) Banks and financial institutions which had participated in the textile or steel sector restructuring package as approved by the Central Government.
- d) Entities falling outside the purview of the Automatic Route as per Schedule I.

ii) **Lenders**

The borrowings in foreign currency by way of issue of bonds, floating rate notes or other debt instruments by whatever name called may be made from -

- a) International bank or export credit agency or international capital market or
- b) Multilateral financial institutions, namely, IFC, ADB, CDC etc., or
- c) Foreign collaborator or foreign equity holder as specified by the Reserve Bank or
- d) Supplier of equipments provided the amount of loan raised does not exceed the total cost of the equipment being supplied by the lender or
- e) Any other eligible entity as prescribed by the Reserve Bank in consultation with Government of India

iii) **Purpose (End-use)**

A) Borrowing in foreign exchange in terms of this Schedule may be for any of the following purposes, namely :-

- a) for investment (such as import of capital goods, new projects, modernisation / expansion of existing production units) in real sector - industrial sector including small and medium enterprises (SME) and infrastructure sector - in India.

Explanation : The following sectors will qualify as infrastructure projects, namely:-

- i) Power, Telecommunications, Railways, Roads including bridges, Ports, Industrial Parks and Urban infrastructure (water supply, sanitation and sewage projects).
- b) for first stage acquisition of shares in the disinvestment process and also in the mandatory second stage offer to the public under the Government's disinvestment programme of PSU shares.
- c) for direct investment in overseas Joint Ventures (JV)/Wholly Owned Subsidiaries (WOS) subject to the existing guidelines on Indian Direct Investment in JV/WOS abroad.

B) Other than the purposes specified hereinabove, the borrowings shall not be utilised for any other purpose including the following purposes, namely:-

On-lending, investment in capital (stock) market, investment in real estate business, working capital requirements, general corporate purpose and repayment of Rupee loans

Note - For the purpose of this clause, real estate business shall not include development of integrated township as defined by the Government of India, Ministry of Commerce and Industry, Department of Industrial Policy and Promotion, SIA (FC Division), Press Note 3(2002 Series) dated January 4, 2002.

iv) **Maturity**

The maturity of the borrowings in foreign exchange shall be as under :

Amount -----	Minimum Average Maturity -----
i) Up to US\$ 20 Million or equivalent	Not less than 3 years.
ii) Exceeding US\$ 20 Million and upto US\$ 500 Million or equivalent	Not less than 5 years

Note - Borrowing up to US\$ 20 Million can have call/put option provided the minimum average maturity of 3 years as prescribed above is complied with before exercising call/put option.

v) **All-in-cost ceilings**

The all-in-cost ceilings for the borrowing in foreign exchange shall be specified by the Reserve Bank from time to time

vi) **Security**

The borrower shall be at liberty to provide security to the lender / suppliers, provided that-

- a) Where the security is in form of immovable property in India or shares of a company in India, it shall be subject to Regulation 8 of Notification No.FEMA.21/2000-RB dated May 3, 2000 and Regulation 3 of Notification No.FEMA.20/2000-RB dated May 3, 2000, respectively.

b) **Guarantee**

Banks, financial institutions and Non-Banking Finance Companies shall not provide (issue) guarantee or Letter of Comfort or Standby Letter of Credit in favour of overseas lender on behalf of their constituents for their borrowings in foreign exchange.

Exception – Banks, financial institutions and Non-Banking Finance Companies shall be permitted to provide Bank Guarantee, or Letter of Comfort or Standby Letter of Credit in favour of Small and Medium Enterprises (SMEs) with the approval of the Reserve Bank.

vii) **Prepayment**

Notwithstanding the provisions of clause (iv) above, prepayment of outstanding foreign currency loan may be made as per the directives issued by the Reserve Bank from time to time.

viii) **Parking of loan amount abroad**

The proceeds of borrowings in foreign exchange shall be parked abroad until actual requirement in India.

ix) **Loan Agreement**

The loan agreement entered into by the borrower with the overseas lender shall strictly conform with these Regulations. The procedure for obtaining loan registration number would be as specified by the Reserve Bank.

x) **Drawal of loan**

Draw-downs of borrowing in foreign exchange shall be made strictly in accordance with the terms of the loan agreement only after obtaining the loan registration number from the Reserve Bank.

xi) **Reporting**

The borrower shall adhere to the reporting procedure as specified by THE Reserve Bank from time to time.

xii) **Debt Servicing**

The designated Authorised Dealer (AD) shall have the general permission to make remittances of principal, interest and other charges in conformity with the guidelines on borrowing in foreign exchange from overseas, issued by Central Government / the Reserve Bank from time to time.

(4) Refinancing of existing borrowing in foreign exchange

(i) Refinancing of outstanding amounts of loans raised in foreign exchange in accordance with the Act or the Rules and Regulations made thereunder, may be made by making fresh borrowing in foreign exchange in accordance with this Schedule provided that there is reduction in cost of borrowing and the outstanding maturity of the original borrowing is not reduced.

(ii) Provisions of sub-paragraphs (iv) of paragraph 3 shall not apply to the borrowings made under Clause 4(i).

SCHEDULE III
[See Regulation 6(3)]

Trade Credit

- (1) Foreign currency credit/loan extended for imports in to India by the overseas supplier, bank and financial institution for original maturity of less than 3 years is hereinafter referred to as 'Trade Credit' for imports. Depending upon the source of finance, such trade credit includes suppliers' credit or buyers' credit.
- (2) Authorised Dealers (ADs) in foreign exchange are permitted to approve trade credits up to USD 20 million per import transaction for import of all items permissible under the Foreign Trade Policy (except Gold) with a maturity period (from the date of shipment) up to one year. For import of capital goods, ADs are permitted to approve trade credits up to USD 20 million per import transaction with a maturity period of more than one year and less than three years. No roll-over/extension will be permitted by the AD beyond the permissible period.
- (3) Trade Credit exceeding USD 20 million per import transaction will require the prior approval of the Reserve Bank of India.