

July 11, 2008

To

All Category – I Authorised Dealer Banks

Madam / Sir,

Security for External Commercial Borrowings – Liberalisation

Attention of Authorised Dealer Category – I (AD Category – I) banks is invited to paragraphs 1(A)(vii) and 1(B)(vi) of the Annex to A. P. (DIR Series) Circular No. 5 dated August 1, 2005 relating to creation of charge over security 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. However, creation of charge over immovable assets and financial securities, such as shares, in favour of the overseas lender is subject to Regulation 8 of Notification No. FEMA 21/RB-2000 dated May 3, 2000 and Regulation 3 of Notification No. FEMA 20/RB-2000 dated May 3, 2000, respectively, as amended from time to time. Accordingly, proposals for creation of charge on immovable assets, financial securities and issue of corporate or personal guarantees, on behalf of the borrower in favour of the overseas lender, to secure the ECB under automatic / approval route, are considered by the Reserve Bank.

3. As a measure of rationalisation of the existing procedures, it has been decided to allow AD Category - I banks to convey 'no objection' under the Foreign Exchange Management Act (FEMA), 1999 for creation of charge on immovable assets, financial securities and issue of corporate or personal guarantees in favour of overseas lender / security trustee, to secure the ECB to be raised by the borrower.

4. Before according 'no objection' under FEMA, 1999, AD Category - I banks may ensure and satisfy themselves that (i) the underlying ECB is strictly in compliance with the extant ECB guidelines, (ii) there exists a security clause in the Loan Agreement requiring the borrower to create charge on immovable assets / financial securities / furnish corporate or personal guarantee, (iii) the loan agreement has been signed by both the lender and the borrower, and (iv) the borrower has obtained Loan Registration Number (LRN) from the Reserve Bank.

5. On compliance of the above conditions, AD Category - I banks may convey their 'no objection', under FEMA, 1999 for creation of charge on immovable assets, financial securities and issue of personal or corporate guarantee, subject to the conditions indicated in paragraphs 6(a), 6(b) and 6(c), respectively.

6. (a) Creation of Charge on Immovable Assets

The 'no objection' for creation of charge on immovable assets may be conveyed under FEMA, 1999 either in favour of the lender or the security trustee, subject to the following conditions:

- (i) 'No objection' shall be granted only to a resident ECB borrower.
- (ii) The period of such charge on immovable assets has to be co-terminus with the maturity of the underlying ECB.
- (iii) Such 'no objection' should not be construed as a permission to acquire immovable asset (property) in India, by the overseas lender / security trustee.
- (iv) 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 over Financial Securities

AD Category – I banks may convey their 'no objection' under FEMA, 1999 to the resident ECB borrower for pledge of shares of the borrowing company held by promoters as well as in domestic associate companies of the borrower to secure the ECB subject to the following conditions :

- (i) The period of such pledge shall be co-terminus with the maturity of the underlying ECB.
- (ii) In case of invocation of pledge, transfer shall be in accordance with the extant FDI policy.
- (iii) A certificate from the Statutory Auditor of the company that the ECB proceeds have been / will be utilized for the permitted end-use/s.

(c) Issue of Corporate or Personal Guarantee

The 'no objection' to the resident ECB borrower for issue of corporate or personal guarantee under FEMA, 1999 may be conveyed after obtaining -

(i) Board Resolution for issue of corporate guarantee from the company issuing such guarantees, specifying names of the officials authorised to execute such guarantees on behalf of the company or in individual capacity.

(ii) Specific requests from individuals to issue personal guarantee indicating details of the ECB.

(iii) Ensuring that the period of such corporate or personal guarantee is co-terminus with the maturity of the underlying ECB.

7. AD Category – I banks may invariably specify that the 'no objection' is issued from the foreign exchange angle under the provisions of FEMA, 1999 and should not be construed as an approval by any other statutory authority or Government under any other laws / regulations. If further approval or permission is required from any other regulatory / statutory authority or Government under the relevant laws / regulations, the applicant should take the approval of the authority concerned before undertaking the transaction. Further, the 'no objection' should not be construed as regularizing or validating any irregularities, contravention or other lapses, if any, under the provisions of FEMA or any other laws or regulations.

8. These amendments to the ECB guidelines shall come into force with immediate effect, subject to review from time to time.

9. Necessary amendments to the Notification No. FEMA 3/2000-RB dated May 3, 2000, Notification No. FEMA 8/2000-RB dated May 3, 2000, Notification No. FEMA 20/2000-RB dated May 3, 2000 and Notification No. FEMA 21/2000-RB dated May 3, 2000 are being issued separately.

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

11. 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