



भारतीय रिज़र्व बैंक
RESERVE BANK OF INDIA
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RBI/2013-14/12

Master Circular No. 12/2013-14

July 1, 2013

To,

All Authorised Dealer Category – I banks and Authorised banks

Madam / Sir,

Master Circular on External Commercial Borrowings and Trade Credits

External Commercial Borrowings and Trade Credits availed of by residents are governed by clause (d) of sub-section 3 of section 6 of the Foreign Exchange Management Act, 1999 read with [Notification No. FEMA 3/ 2000-RB](#) viz. Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, dated May 3, 2000, as amended from time to time.

2. This Master Circular consolidates the existing instructions on the subject of "External Commercial Borrowings and Trade Credits" at one place. The list of underlying circulars / notifications, consolidated in this Master Circular, is furnished in the Appendix.

3. This circular will stand withdrawn on July 1, 2014 and be replaced by an updated Master Circular on the subject.

Yours faithfully,

(Rudra Narayan Kar)
Chief General Manager-in-Charge

INDEX

PART I
EXTERNAL COMMERCIAL BORROWINGS (ECB)
I.(A) AUTOMATIC ROUTE
i) Eligible Borrowers
ii) Recognised Lenders
iii) Amount and Maturity
iv) All-in-cost ceilings
v) End-use
vi) Payment for Spectrum Allocation
vii) End-uses not permitted
viii) Guarantees
ix) Security
x) Parking of ECB proceeds
xi) Prepayment
xii) Refinancing of an existing ECB
xiii) Debt Servicing
xiv) Corporates Under Investigation
xv) Procedure
I.(B) APPROVAL ROUTE
i) Eligible Borrowers
ii) Recognised Lenders
iii) Amount and Maturity
iv) All-in-cost ceilings
v) End-use
vi) Repayment of Rupee loans and/or fresh Rupee capital expenditure for companies with consistent forex earnings
vii) ECB for Low Cost Affordable Housing
viii) 3G Spectrum Allocation
ix) End-uses not permitted
x) Guarantee
xi) Security
xii) Parking of ECB proceeds
xiii) Prepayment
xiv) Refinancing/rescheduling of an existing ECB
xv) Debt Servicing
xvi) Procedure
xvii) Foreign Currency Exchangeable Bonds
xviii) Empowered Committee
II. REDEMPTION OF FCCBs

III. REPORTING ARRANGEMENTS AND DISSEMINATION OF INFORMATION
i) Reporting Arrangements
ii) Dissemination of Information
IV. STRUCTURED OBLIGATIONS
V. TAKE-OUT FINANCE
VI. COMPLIANCE WITH ECB GUIDELINES
VII. CONVERSION OF ECB INTO EQUITY
VIII. CRYSTALLISATION OF ECB
IX. ECB UNDER THE ERSTWHILE USD 5 MILLION SCHEME
X. RATIONALIZATION OF PROCEDURES - DELEGATION OF POWERS TO AUTHORISED DEALERS (AD)
(a) Changes/modifications in the drawdown/repayment schedule
(b) Changes in the currency of borrowing
(c) Change of the AD bank
(d) Changes in the name of the Borrower Company
(e) Change in the recognized lender
(f) Cancellation of LRN
(g) Change in the end-use of ECB proceeds
(h) Reduction in amount of ECB
(i) Reduction in the all-in-cost of ECB
PART-II
TRADE CREDITS FOR IMPORTS INTO INDIA
a) Amount and Maturity
b) All-in-cost Ceilings
c) Guarantee
d) Reporting Arrangements
Annex-I - Form ECB
Annex II - Form-83
Annex-III - ECB - 2
Annex-IV - Form - TC
Annex V - Statement on Guarantees / Letter of Undertaking / Letter of Comfort issued by Authorised Dealer banks
Annex VI - Calculation of Average Maturity- An Illustration
Annex VII – Quarterly Statement of guarantee availed of from non-resident entities for fund and non-fund based activities
Appendix List of Notification/ A.P. (DIR Series) Circulars

PART I

EXTERNAL COMMERCIAL BORROWINGS (ECB)

At present, Indian companies are allowed to access funds from abroad in the following methods:

(i) External Commercial Borrowings (ECB) refer to commercial loans in the form of bank loans, buyers' credit, suppliers' credit, securitized instruments (e.g. floating rate notes and fixed rate bonds, non-convertible, optionally convertible or partially convertible preference shares) availed of from non-resident lenders with a minimum average maturity of 3 years.

(ii) Foreign Currency Convertible Bonds (FCCBs) mean a bond issued by an Indian company expressed in foreign currency, and the principal and interest in respect of which is payable in foreign currency. Further, the bonds are required to be issued in accordance with the scheme viz., "Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993", and subscribed by a non-resident in foreign currency and convertible into ordinary shares of the issuing company in any manner, either in whole, or in part, on the basis of any equity related warrants attached to debt instruments. The ECB policy is applicable to FCCBs. The issue of FCCBs is also required to adhere to the provisions of [Notification FEMA No. 120/RB-2004 dated July 7, 2004](#), as amended from time to time.

(iii) Preference shares (i.e. non-convertible, optionally convertible or partially convertible) for issue of which, funds have been received on or after May 1, 2007 would be considered as debt and should conform to the ECB policy. Accordingly, all the norms applicable for ECB, viz. eligible borrowers, recognised lenders, amount and maturity, end use stipulations, etc. shall apply. Since these instruments would be denominated in Rupees, the rupee interest rate will be based on the swap equivalent of LIBOR plus the spread as permissible for ECBs of corresponding maturity.

(iv) Foreign Currency Exchangeable Bond (FCEB) means a bond expressed in foreign currency, the principal and interest in respect of which is payable in foreign currency, issued by an Issuing Company and subscribed to by a person who is a resident outside India, in foreign currency and exchangeable into equity share of another company, to be called the Offered Company, in any manner, either wholly, or partly or on the basis of any equity related warrants attached to debt instruments. The FCEB must comply with the "Issue of Foreign Currency Exchangeable Bonds (FCEB) Scheme, 2008", notified by the Government of India, Ministry of Finance, Department of Economic Affairs vide Notification G.S.R.89(E) dated February 15, 2008. The guidelines, rules, etc. governing ECBs are also applicable to FCEBs.

ECB can be accessed under two routes, viz., (i) Automatic Route outlined in paragraph I (A) and (ii) Approval Route outlined in paragraph I (B).

ECB for investment in real sector-industrial sector, infrastructure sector and specified service sectors in India as indicated under para I (A) (i) (a) are under Automatic Route, i.e. do not require Reserve Bank / Government of India approval. In case of

doubt as regards eligibility to access the Automatic Route, applicants may take recourse to the Approval Route.

I. (A) AUTOMATIC ROUTE

The following types of proposals for ECBs are covered under the Automatic Route.

i) Eligible Borrowers

(a) Corporates, including those in the hotel, hospital, software sectors (registered under the Companies Act, 1956) and Infrastructure Finance Companies (IFCs) except financial intermediaries, such as banks, financial institutions (FIs), Housing Finance Companies (HFCs) and Non-Banking Financial Companies (NBFCs), other than those specifically allowed by Reserve Bank, are eligible to raise ECB. Individuals, Trusts (other than those engaged in Micro-finance activities) and Non-Profit making organizations are not eligible to raise ECB.

(b) Units in Special Economic Zones (SEZ) are allowed to raise ECB for their own requirement. However, they cannot transfer or on-lend ECB funds to sister concerns or any unit in the Domestic Tariff Area (DTA).

(c) Non-Government Organizations (NGOs) engaged in micro finance activities are eligible to avail of ECB.

(d) Micro Finance Institutions (MFIs) engaged in micro finance activities are eligible to avail of ECBs. MFIs registered under the Societies Registration Act, 1860, MFIs registered under Indian Trust Act, 1882, MFIs registered either under the conventional state-level cooperative acts, the national level multi-state cooperative legislation or under the new state-level mutually aided cooperative acts (MACS Act) and not being a co-operative bank, Non-Banking Financial Companies (NBFCs) categorized as 'Non Banking Financial Company-Micro Finance Institutions' (NBFC-MFIs) and complying with the norms prescribed as per [circular DNBS.CC.PD.No. 250/03.10.01/2011-12 dated December 02, 2011](#) and Companies registered under Section 25 of the Companies Act, 1956 and are involved in micro finance activities.

(e) NGOs engaged in micro finance and MFIs registered as societies, trusts and co-operatives and engaged in micro finance (i) should have a satisfactory borrowing relationship for at least 3 years with a scheduled commercial bank authorized to deal in foreign exchange in India and (ii) would require a certificate of due diligence on 'fit and proper' status of the Board/ Committee of management of the borrowing entity from the designated AD bank.

(f) Small Industries Development Bank of India (SIDBI) can avail of ECB for on-lending to MSME sector, as defined under the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006.

ii) Recognised Lenders

Borrowers can raise ECB from internationally recognized sources, such as (a) international banks, (b) international capital markets, (c) multilateral financial

institutions (such as IFC, ADB, CDC, etc.) / regional financial institutions and Government owned development financial institutions, (d) export credit agencies, (e) suppliers of equipments, (f) foreign collaborators and (g) foreign equity holders [other than erstwhile Overseas Corporate Bodies (OCBs)].

NGOs engaged in micro finance and MFIs registered as societies, trusts and co-operatives can avail of ECBs from (a) international banks, (b) multilateral financial institutions, (c) export credit agencies (d) overseas organisations and (e) individuals.

NBFC-MFIs will be permitted to avail of ECBs from multilateral institutions, such as IFC, ADB etc./ regional financial institutions/international banks / foreign equity holders and overseas organizations.

Companies registered under Section 25 of the Companies Act,1956 and are engaged in micro finance will be permitted to avail of ECBs from international banks, multilateral financial institutions, export credit agencies, foreign equity holders, overseas organizations and individuals.

A "foreign equity holder" to be eligible as "recognized lender" under the automatic route would require minimum holding of paid-up equity in the borrower company as set out below:

- i. For ECB up to USD 5 million - minimum paid-up equity of 25 per cent held directly by the lender,
- ii. For ECB more than USD 5 million - minimum paid-up equity of 25 per cent held directly by the lender and ECB liability-equity ratio not exceeding 4:1

Besides the paid-up capital, free reserves (including the share premium received in foreign currency) as per the latest audited balance sheet shall be reckoned for the purpose of calculating the 'equity' of the foreign equity holder in the term ECB liability-equity ratio. Where there are more than one foreign equity holder in the borrowing company, the portion of the share premium in foreign currency brought in by the lender(s) concerned shall only be considered for calculating the ECB liability-equity ratio for reckoning quantum of permissible ECB.

For calculating the 'ECB liability', not only the proposed borrowing but also the outstanding ECB from the same foreign equity holder lender shall be reckoned.

Overseas organizations and individuals providing ECB need to comply with the following safeguards:

- i. Overseas Organizations proposing to lend ECB would have to furnish to the AD bank of the borrower a certificate of due diligence from an overseas bank, which, in turn, is subject to regulation of host-country regulator and adheres to the Financial Action Task Force (FATF) guidelines. The certificate of due diligence should comprise the following (i) that the lender maintains an account with the bank for at least a period of two years, (ii) that the lending entity is organised as per the local laws and held in good esteem by the business/local community and (iii) that there is no criminal action pending against it.

- ii. Individual Lender has to obtain a certificate of due diligence from an overseas bank indicating that the lender maintains an account with the bank for at least a period of two years. Other evidence /documents such as audited statement of account and income tax return which the overseas lender may furnish need to be certified and forwarded by the overseas bank. Individual lenders from countries wherein banks are not required to adhere to Know Your Customer (KYC) guidelines are not eligible to extend ECB.

iii) Amount and Maturity

- a. The maximum amount of ECB which can be raised by a corporate other than those in the hotel, hospital and software sectors is USD 750 million or its equivalent during a financial year.
- b. Corporates in the services sector viz. hotels, hospitals and software sector are allowed to avail of ECB up to USD 200 million or its equivalent in a financial year for meeting foreign currency and/ or Rupee capital expenditure for permissible end-uses. The proceeds of the ECBs should not be used for acquisition of land.
- c. NGOs engaged in micro finance activities and Micro Finance Institutions (MFIs) can raise ECB up to USD 10 million or its equivalent during a financial year. Designated AD bank has to ensure that at the time of drawdown the forex exposure of the borrower is fully hedged.
- d. SIDBI can avail of ECB to the extent of 50 per cent of their owned funds including the outstanding ECB, subject to a ceiling of USD 500 million per financial year.
- e. ECB up to USD 20 million or its equivalent in a financial year with minimum average maturity of three years. An illustration of average maturity period calculation is provided at Annex VI.
- f. ECB above USD 20 million or equivalent and up to USD 750 million or its equivalent with a minimum average maturity of five years.
- g. ECB up to USD 20 million or equivalent can have call/put option provided the minimum average maturity of three years is complied with before exercising call/put option.
- h. All eligible borrowers can avail of ECBs designated in INR from 'foreign equity holders' as per the extant ECB guidelines.
- i. NGOs engaged in micro finance activities can avail of ECBs designated in INR, from overseas organizations and individuals as per the extant guidelines.

iv) All-in-cost ceilings

All-in-cost includes rate of interest, other fees and expenses in foreign currency except commitment fee, pre-payment fee, and fees payable in Indian Rupees. The payment of withholding tax in Indian Rupees is excluded for calculating the all-in-cost. The existing all-in-cost ceilings for ECB are as under:

Average Maturity Period	All-in-cost Ceilings over 6 month LIBOR*
Three years and up to five years	350 basis points
More than five years	500 basis points

* for the respective currency of borrowing or applicable benchmark

In the case of fixed rate loans, the swap cost plus margin should be the equivalent of the floating rate plus the applicable margin.

v) End-use

- a. ECB can be raised for investment such as import of capital goods (as classified by DGFT in the Foreign Trade Policy), new projects, modernization/expansion of existing production units in real sector - industrial sector including small and medium enterprises (SME), infrastructure sector and specified service sectors, namely, hotel, hospital and software in India. Infrastructure sector is defined as (i) power, (ii) telecommunication, (iii) railways, (iv) roads including bridges, (v) sea port and airport, (vi) industrial parks, (vii) urban infrastructure (water supply, sanitation and sewage projects), (viii) mining, exploration and refining 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.
- b. Overseas Direct Investment in Joint Ventures (JV)/ Wholly Owned Subsidiaries (WOS) subject to the existing guidelines on Indian Direct Investment in JV/ WOS abroad.
- c. Utilization of ECB proceeds is permitted 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.
- d. Interest During Construction (IDC) for Indian companies which are in the infrastructure sector, where "infrastructure" is defined as per the extant ECB guidelines, subject to IDC being capitalized and forming part of the project cost.
- e. For lending to self-help groups or for micro-credit or for bonafide micro finance activity including capacity building by NGOs engaged in micro finance activities.
- f. Infrastructure Finance Companies (IFCs) i.e. Non-Banking Financial Companies (NBFCs) categorized as IFCs by the Reserve Bank, are permitted to avail of ECBs, including the outstanding ECBs, up to 75 per cent of their owned funds, for on-lending to the infrastructure sector as defined under the ECB policy, subject to their complying with the following conditions: i) compliance with the norms prescribed in the [DNBS Circular DNBS.PD.CCNo.168/03.02.089/2009-10 dated February 12, 2010](#) ii) Hedging requirement for currency risk should be 75 per cent of the exposure. Designated Authorised Dealer (AD) should ensure compliance with the extant norms while certifying the ECB application.
- g. Maintenance and operations of toll systems for roads and highways for capital expenditure provided they form part of the original project

- h. SIDBI can on lend to the borrowers in the MSME sector for permissible end uses, having natural hedge by way of foreign exchange earnings. SIDBI may on-lend either in INR or in foreign currency (FCY). In case of on-lending in INR, the foreign currency risk shall be fully hedged by SIDBI.
- i. Refinancing of Bridge Finance (including buyers' / suppliers' credit) availed of for import of capital goods by companies in Infrastructure Sector
- j. **Import of services, technical know-how and payment of license fees:** The companies in the manufacturing and infrastructure sectors may import services, technical know-how and payment of license fees as part of import of capital goods subject to certain conditions.

vi) Payment for Spectrum Allocation

(a) Relaxation for the successful Bidders of 2G spectrum Re-auction

(i) to make the upfront payment initially out of Rupee loans availed of from the domestic lenders and refinance such Rupee loans with a long-term ECB provided such ECB is raised within a period of 18 months from the date of sanction of such Rupee loans for the stated purpose from the domestic lenders. (ii) Availing of short term foreign currency loan in the nature of bridge finance for the purpose of making upfront payment and replace the same with a long term ECB subject to condition that the long term ECB is raised within a period of 18 months from the date of drawdown of the bridge finance. (iii) ECB can be availed of from their ultimate parent company without any maximum ECB liability-equity ratio subject to the condition that the lender holds minimum paid-up equity of 25 per cent in the borrower company, either directly or indirectly.

vii) End-uses not permitted

Other than the purposes specified hereinabove, the borrowings shall not be utilized for any other purpose including the following purposes, namely:

(a) For on-lending or investment in capital market or acquiring a company (or a part thereof) in India by a corporate [investment in Special Purpose Vehicles (SPVs), Money Market Mutual Funds (MMMFs), etc., are also considered as investment in capital markets].

(b) for real estate sector,

(c) for working capital, general corporate purpose and repayment of existing rupee loans.

viii) Guarantees

Issuance of guarantee, standby letter of credit, letter of undertaking or letter of comfort by banks, Financial Institutions and Non-Banking Financial Companies (NBFCs) from India relating to ECB is not permitted.

ix) Security

The choice of security to be provided to the lender/supplier 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. AD Category - I banks have been delegated powers 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.

Before according 'no objection' under FEMA, 1999, AD Category - I banks should 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.

On compliance with 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 below:

a) 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) 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) 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.

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 law/ regulation. 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.

x) Parking of ECB proceeds

Borrowers are permitted to either keep ECB proceeds abroad or to remit these funds to India, pending utilization for permissible end-uses.

The proceeds of the ECB raised abroad meant for Rupee expenditure in India, such as, local sourcing of capital goods, on-lending to Self-Help Groups or for micro credit, payment for spectrum allocation, etc. should be repatriated immediately for credit to the borrowers' Rupee accounts with AD Category I banks in India. In other words, ECB proceeds meant only for foreign currency expenditure can be retained abroad pending utilization. The rupee funds, however, will not be permitted to be used for investment in capital markets, real estate or for inter-corporate lending.

ECB proceeds parked overseas can be invested in the following liquid assets (a) deposits or Certificate of Deposit or other products offered by banks rated not less than AA (-) by Standard and Poor/Fitch IBCA or Aa3 by Moody's (b) Treasury bills and other monetary instruments of one year maturity having minimum rating as indicated above, and (c) deposits with overseas branches / subsidiaries of Indian banks abroad. The funds should be invested in such a way that the investments can be liquidated as and when funds are required by the borrower in India.

The primary responsibility to ensure that the ECB proceeds meant for Rupee expenditure in India are repatriated to India for credit to their Rupee accounts with AD Category- I banks in India is that of the borrower concerned and any contravention of the ECB guidelines will be viewed seriously and will invite penal action under the Foreign Exchange Management Act (FEMA), 1999. The designated

AD bank is also required to ensure that the ECB proceeds meant for Rupee expenditure are repatriated to India immediately after drawdown.

xi) Prepayment

Prepayment of ECB up to USD 500 million may be allowed by AD banks without prior approval of Reserve Bank subject to compliance with the stipulated minimum average maturity period as applicable to the loan.

xii) Refinancing of an existing ECB

The existing ECB may be refinanced by raising a fresh ECB subject to the condition that the fresh ECB is raised at a lower all-in-cost and the outstanding maturity of the original ECB is maintained.

An existing ECB may, however, be refinanced by raising a fresh ECB at a higher all-in-cost under the approval route.

xiii) Debt Servicing

The designated AD bank has the general permission to make remittances of installments of principal, interest and other charges in conformity with the ECB guidelines issued by Government / Reserve Bank of India from time to time.

xiv) Corporates Under Investigation

All entities against which investigations / adjudications / appeals by the law enforcing agencies are pending may avail of ECBs as per the current norms, if they are otherwise eligible, notwithstanding the pending investigations / adjudications / appeals, without prejudice to the outcome of such investigations / adjudications / appeals. Accordingly, in case of all applications where the borrowing entity has indicated about the pending investigations / adjudications / appeals, Authorised Dealers while approving the proposal shall intimate the concerned agencies by endorsing the copy of the approval letter.

xv) Procedure

Borrowers may enter into loan agreement complying with the ECB guidelines with recognised lender for raising ECB under Automatic Route without the prior approval of the Reserve Bank. The borrower must obtain a Loan Registration Number (LRN) from the Reserve Bank of India before drawing down the ECB. The procedure for obtaining LRN is detailed in para III (i) (b).

I.(B) APPROVAL ROUTE

i) Eligible Borrowers

The following types of proposals for ECB are covered under the Approval Route:

- a. On lending by the EXIM Bank for specific purposes will be considered on a case by case basis.
- b. Banks and financial institutions which had participated in the textile or steel sector restructuring package as approved by the Government are also permitted to the extent of their investment in the package and assessment by the Reserve Bank based on prudential norms. Any ECB availed for this purpose so far will be deducted from their entitlement.
- c. ECB with minimum average maturity of 5 years by Non-Banking Financial Companies (NBFCs) from multilateral financial institutions, reputable regional financial institutions, official export credit agencies and international banks to finance import of infrastructure equipment for leasing to infrastructure projects.
- d. Infrastructure Finance Companies (IFCs) i.e. Non-Banking Financial Companies (NBFCs), categorized as IFCs, by the Reserve Bank, are permitted to avail of ECBs, including the outstanding ECBs, beyond 75 per cent of their owned funds, for on-lending to the infrastructure sector as defined under the ECB policy, subject to their complying with the following conditions: i) compliance with the norms prescribed in the [DNBS Circular DNBS.PD.CCNo.168 / 03.02.089 / 2009-10 dated February 12, 2010](#) ii) hedging of the currency risk in full. Designated Authorised Dealer should ensure compliance with the extant norms while certifying the ECB application. While forwarding such proposals to the Reserve Bank of India, designated AD Category – I banks should certify the leverage ratio (i.e. outside liabilities/owned funds) of IFCs.
- e. Foreign Currency Convertible Bonds (FCCBs) by Housing Finance Companies satisfying the following minimum criteria: (i) the minimum net worth of the financial intermediary during the previous three years shall not be less than Rs. 500 crore, (ii) a listing on the BSE or NSE, (iii) minimum size of FCCB is USD 100 million and (iv) the applicant should submit the purpose / plan of utilization of funds.
- f. Special Purpose Vehicles, or any other entity notified by the Reserve Bank, set up to finance infrastructure companies / projects exclusively, will be treated as Financial Institutions and ECB by such entities will be considered under the Approval Route.
- g. Multi-State Co-operative Societies engaged in manufacturing activity and satisfying the following criteria i) the Co-operative Society is financially solvent and ii) the Co-operative Society submits its up-to-date audited balance sheet.
- h. SEZ developers can avail of ECBs for providing infrastructure facilities within SEZ, as defined in the extant ECB policy like (i) power, (ii) telecommunication, (iii) railways, (iv) roads including bridges, (v) sea port and airport, (vi) industrial parks, (vii) urban infrastructure (water supply, sanitation and sewage projects), (viii) mining, exploration and refining 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.

- i. Developers of National Manufacturing Investment Zones (NMIZs) can avail of ECB for providing infrastructure facilities within SEZ, as defined in the extant ECB policy like (i) power, (ii) telecommunication, (iii) railways, (iv) roads including bridges, (v) sea port and airport, (vi) industrial parks, (vii) urban infrastructure (water supply, sanitation and sewage projects), (viii) mining, exploration and refining 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.
- j. Eligible borrowers under the automatic route other than corporates in the services sector viz. hotel, hospital and software can avail of ECB beyond USD 750 million or equivalent per financial year.
- k. Corporates in the services sector viz. hotels, hospitals and software sector can avail of ECB beyond USD 200 million or equivalent per financial year.
- l. Service sector units, other than those in hotels, hospitals and software, subject to the condition that the loan is obtained from foreign equity holders. This would facilitate borrowing by training institutions, R & D, miscellaneous service companies, etc.
- m. Small Industries Development Bank of India (SIDBI) is eligible to avail of ECB for on-lending to MSME sector, as defined under the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006, beyond 50 per cent of their owned funds, subject to a ceiling of USD 500 million per financial year provided such on-lending by SIDBI shall be to the borrowers' for permissible end-use and having natural hedge by way of foreign exchange earnings. SIDBI may on-lend either in INR or in foreign currency (FCY). In case of on-lending in INR, the foreign currency risk shall be fully hedged by SIDBI.
- n. Low Cost Affordable Housing Projects: Developers/builders / Housing Finance Companies (HFCs) / National Housing Bank (NHB) may avail of ECB for low cost affordable housing projects [refer to para I B (vii) *ibid*].
- o. Corporates Under Investigation: All entities against which investigations / adjudications / appeals by the law enforcing agencies are pending, may avail of ECBs as per the current norms, if they are otherwise eligible, notwithstanding the pending investigations / adjudications / appeals, without prejudice to the outcome of such investigations / adjudications / appeals. Accordingly, in case of all applications where the borrowing entity has indicated about the pending investigations / adjudications / appeals, the Reserve Bank of India while approving the proposal shall intimate the concerned agencies by endorsing the copy of the approval letter.
- p. **Import of services, technical know-how and payment of license fees:** The companies in the manufacturing and infrastructure sectors may import services, technical know-how and payment of license fees as part of import of capital goods subject to certain conditions.
- q. Cases falling outside the purview of the automatic route limits and maturity period are indicated at paragraph I A (iii).

ii) Recognised Lenders

(a) Borrowers can raise ECB from internationally recognised sources, such as (i) international banks, (ii) international capital markets, (iii) multilateral financial institutions (such as IFC, ADB, CDC, etc.)/ regional financial institutions and Government owned development financial institutions, (iv) export credit agencies, (v)

suppliers' of equipment, (vi) foreign collaborators and (vii) foreign equity holders (other than erstwhile OCBs).

(b) A "foreign equity holder" to be eligible as "recognized lender" under the approval route would require minimum holding of paid-up equity in the borrower company as set out below:

(i) For ECB up to USD 5 million - minimum paid-up equity of 25 per cent held directly by the lender;

(ii) For ECB more than USD 5 million - minimum paid-up equity of 25 per cent held directly by the lender and ECB liability-equity ratio not exceeding 7:1;

(c) ECB from indirect equity holders provided the indirect equity holding by the lender in the Indian company is at least 51 per cent;

(d) ECB from a group company provided both the borrower and the foreign lender are subsidiaries of the same parent.

Besides the paid-up capital, free reserves (including the share premium received in foreign currency) as per the latest audited balance sheet shall be reckoned for the purpose of calculating the 'equity' of the foreign equity holder in the term ECB liability-equity ratio. Where there are more than one foreign equity holder in the borrowing company, the portion of the share premium in foreign currency brought in by the lender(s) concerned shall only be considered for calculating the ECB liability-equity ratio for reckoning quantum of permissible ECB.

For calculating the 'ECB liability', not only the proposed borrowing but also the outstanding ECB from the same foreign equity holder lender shall be reckoned.

The total outstanding stock of ECBs (including the proposed ECBs) from a foreign equity lender should not exceed seven times the equity holding, either directly or indirectly of the lender (in case of lending by a group company, equity holdings by the common parent would be reckoned).

iii) Amount and Maturity

Eligible borrowers under the automatic route other than corporates in the services sector viz. hotel, hospital and software can avail of ECB beyond USD 750 million or equivalent per financial year. Corporates in the services sector viz. hotels, hospitals and software sector are allowed to avail of ECB beyond USD 200 million or its equivalent in a financial year for meeting foreign currency and/ or Rupee capital expenditure for permissible end-uses. The proceeds of the ECBs should not be used for acquisition of land.

An illustration of average maturity period calculation is provided at Annex VI.

iv) All-in-cost ceilings

All-in-cost includes rate of interest, other fees and expenses in foreign currency except commitment fee, pre-payment fee and fees payable in Indian Rupees. The payment of withholding tax in Indian Rupees is excluded for calculating the all-in-cost. The existing all-in-cost ceilings for ECB are as under:

Average Maturity Period	All-in-cost Ceilings over 6 month LIBOR*
Three years and up to five years	350 basis points
More than five years	500 basis points

* for the respective currency of borrowing or applicable benchmark

In the case of fixed rate loans, the swap cost plus the margin should be the equivalent of the floating rate plus the applicable margin.

v) End-use

- a. ECB can be raised only for investment [such as import of capital goods (as classified by DGFT in the Foreign Trade Policy), implementation of new projects, modernization/expansion of existing production units] in real sector - industrial sector including small and medium enterprises (SME) and infrastructure sector - in India. Infrastructure sector is defined as (i) power (ii) telecommunication (iii) railways (iv) roads including bridges (v) sea port and airport (vi) industrial parks (vii) urban infrastructure (water supply, sanitation and sewage projects) (viii) mining, exploration and refining 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.
- b. Overseas Direct Investment in Joint Ventures (JV)/Wholly Owned Subsidiaries (WOS) subject to the existing guidelines on Indian Direct Investment in JV/WOS abroad.
- c. Interest During Construction (IDC) for Indian companies which are in the infrastructure sector, as defined under the extant ECB guidelines subject to IDC being capitalized and forming part of the project cost.
- d. The payment by eligible borrowers in the Telecom sector, for spectrum allocation may, initially, be met out of Rupee resources by the successful bidders, to be refinanced with a long-term ECB, under the approval route, subject to the following conditions:
 - (i) The ECB should be raised within 12 months from the date of payment of the final instalment to the Government;
 - (ii) The designated AD - Category I bank should monitor the end-use of funds;
 - (iii) Banks in India will not be permitted to provide any form of guarantees; and
 - (iv) All other conditions of ECB, such as eligible borrower, recognized lender, all-in-cost, average maturity, etc. should be complied with.

- e. The 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.
- f. Repayment of Rupee loans availed of from domestic banking system: Indian companies which are in the infrastructure sector (except companies in the power sector), as defined under the extant ECB guidelines , are permitted to utilise 25 per cent of the fresh ECB raised by them towards refinancing of the Rupee loan/s availed by them from the domestic banking system, subject to the following conditions:

(i) at least 75 per cent of the fresh ECB proposed to be raised should be utilised for capital expenditure towards a 'new infrastructure' project(s)

(ii) in respect of remaining 25 per cent, the refinance shall only be utilized for repayment of the Rupee loan availed of for 'capital expenditure' of earlier completed infrastructure project(s); and

(iii) the refinance shall be utilized only for the Rupee loans which are outstanding in the books of the financing bank concerned.

Companies in the power sector are permitted to utilize up to 40 per cent of the fresh ECB raised by them towards refinancing of the Rupee loan/s availed by them from the domestic banking system subject to the condition that at least 60 per cent of the fresh ECB proposed to be raised should be utilized for fresh capital expenditure for infrastructure project(s).

g. **Bridge Finance:** Indian companies which are in the infrastructure sector, as defined under the extant ECB policy are permitted to import capital goods by availing of short term credit (including buyers' / suppliers' credit) in the nature of 'bridge finance', with RBI's prior approval provided the bridge finance shall be replaced with a long term ECB as per extant ECB guidelines.

h. **ECB for working capital for civil aviation sector:** Airline companies registered under the Companies Act, 1956 and possessing scheduled operator permit license from DGCA for passenger transportation are eligible to avail of ECB for working capital. Such ECBs will be allowed based on the cash flow, foreign exchange earnings and the capability to service the debt and the ECBs can be raised with a minimum average maturity period of three years.

The overall ECB ceiling for the entire civil aviation sector would be USD one billion and the maximum permissible ECB that can be availed by an individual airline company will be USD 300 million. This limit can be utilized for working capital as well as refinancing of the outstanding working capital Rupee loan(s) availed of from the domestic banking system. ECB availed for working capital/refinancing of working capital as above will not be allowed to be rolled over. The foreign exchange for repayment of ECB should not be accessed from Indian markets and the liability should be extinguished only out of the foreign exchange earnings of the borrowing company. The scheme will be available upto December 31, 2013.

vi) Repayment of Rupee loans and/or fresh Rupee capital expenditure for companies with consistent forex earnings

Indian companies in the manufacturing, infrastructure sector and hotel sector (with a total project cost of INR 250 crore or more irrespective of geographical location for hotel sector), can avail of ECBs for repayment of outstanding Rupee loans availed of for capital expenditure from the domestic banking system and/or fresh Rupee capital expenditure provided they are consistent foreign exchange earners during the past three financial years and not in the default list/caution list of the Reserve Bank of India. The overall limit for such ECBs is USD 10 billion and the maximum ECB that can be availed by an individual company or group, as a whole, under this scheme will be restricted to USD 3 billion. Further, the maximum permissible ECB that can be availed of by an individual company will be limited to 75 per cent of the average annual export earnings realized during the past three financial years or 50 per cent of the highest foreign exchange earnings realized in any of the immediate past three financial years, whichever is higher. In case of Special Purpose Vehicles (SPVs), which have completed at least one year of existence from the date of incorporation and do not have sufficient track record/past performance for three financial years, the maximum permissible ECB that can be availed of will be limited to 50 per cent of the annual export earnings realized during the past financial year.

The foreign exchange for repayment of ECB should not be accessed from Indian markets and the liability arising out of ECB should be extinguished only out of the foreign exchange earnings of the borrowing company.

vii) ECB for Low Cost Affordable Housing (a) For the purpose of ECB, a low cost affordable housing project is a project in which at least 60 per cent of the permissible FSI would be for units having maximum carpet area up to 60 square meters. Slum rehabilitation projects will also be eligible under the low cost affordable housing scheme, the eligibility of which would be based on the parameters to be set by the Central Sanctioning and Monitoring Committee of the Affordable Housing in Partnership Scheme (AHP) constituted for the purpose. ECB proceeds shall be utilized only for low cost affordable housing projects and shall not be utilized for acquisition of land. (b) **Developers/builders** may avail of ECB for low cost affordable housing projects provided they are companies registered under the Companies Act, 1956, having minimum 3 years' experience in undertaking residential projects, have good track record in terms of quality and delivery and the project and all necessary clearances from various bodies including Revenue Department with respect to land usage/environment clearance, etc., are available on record. They should also not have defaulted in any of their financial commitments to banks/ financial institutions or any other agencies and the project should not be a matter of litigation. The ECB should be swapped into Rupees for the entire maturity on fully hedged basis. (c) **Housing Finance Companies (HFCs) / National Housing Bank (NHB)** can also avail of ECB for financing prospective owners of low cost affordable housing units provided such HFCs are registered with the National Housing Bank (NHB) and operating in accordance with the regulatory directions and guidelines issued by NHB. The minimum Net Owned Funds (NOF) for the past three financial years should not be less than INR 300 crore. Borrowing through ECB should be within overall borrowing limit of 16 (sixteen) times of their Net Owned Fund (NOF) and the net non-performing assets (NNPA) should not exceed 2.5 % of the

net advances. The maximum loan amount sanctioned to the individual buyer will be capped at INR 25 lakh subject to the condition that the cost of the individual housing unit shall not exceed INR 30 lakh. The ECB should be swapped into Rupees for the entire maturity on fully hedged basis. HFCs while making the applications, shall submit a certificate from NHB that the availment of ECB is for financing prospective owners of individual units for the low cost affordable housing and ensure that the interest rate spread charged by them to the ultimate buyer is reasonable.

(d) NHB is also eligible to raise ECB for financing low cost affordable housing units of individual borrowers. Further, in case, a developer of low cost affordable housing project not being able to raise ECB directly as envisaged above, National Housing Bank is permitted to avail of ECB for on-lending to such developers which satisfy the conditions prescribed to developers / builders subject to the interest rate spread set by RBI. ECB proceeds shall be utilized only for low cost affordable housing projects and shall not be utilized for acquisition of land.(e) Interest rate spread to be charged by NHB may be decided by NHB taking into account cost and other relevant factors. NHB shall ensure that interest rate spread for HFCs for on-lending to prospective owners' of individual units under the low cost affordable housing scheme is reasonable. (f) Builders / developers meeting the eligibility criteria shall have to apply to the National Housing Bank (NHB) in the prescribed format. NHB shall act as the nodal agency for deciding a project's eligibility as a low cost affordable housing project, and on being satisfied, forward the application to the Reserve Bank for consideration under the approval route. Once NHB decides to forward an application for consideration of RBI, the prospective borrower (builder/developer) will be advised by the NHB to approach RBI for availing ECB through his Authorised Dealer in the prescribed format. (g) Developers / builders / HFCs / NHB will not be permitted to raise Foreign Currency Convertible Bonds (FCCBs) under this scheme. (h) An aggregate limit of USD 1(one) billion each for the financial year 2013-14 and 2014-15 is fixed for ECB under the low cost affordable housing scheme which includes ECBs to be raised by developers/builders and NHB/specified HFCs. .

viii) 3G Spectrum Allocation

The payment for 3G spectrum allocation, initially met out of Rupee resources raised domestically from banks by the successful bidders and are still outstanding in telecom operator's books of account is allowed to be refinanced with a long-term ECB, till March 31, 2014.

ix) End-uses not permitted

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

(a) For on-lending or investment in capital market or acquiring a company (or a part thereof) in India by a corporate except Infrastructure Finance Companies (IFCs), banks and financial institutions eligible under paragraph I (B) (i) (a), (b), (d), (e), (f), (m) and (n).

(b) For real estate.

(c) For working capital [except as stated at I(B)(v)(h)] and general corporate purpose and repayment of existing Rupee loans [except as stated at I(B)(v) (d), (f) and (vi)].

x) Guarantee

Issuance of guarantee, standby letter of credit, letter of undertaking or letter of comfort by banks, financial institutions and NBFCs relating to ECB is not normally permitted. Applications for providing guarantee/standby letter of credit or letter of comfort by banks, financial institutions relating to ECB in the case of SME will be considered on merit subject to prudential norms.

With a view to facilitating capacity expansion and technological upgradation in Indian textile industry, issue of guarantees, standby letters of credit, letters of undertaking and letters of comfort by banks in respect of ECB by textile companies for modernization or expansion of textile units will be considered under the Approval Route subject to prudential norms.

xi) Security

The choice of security to be provided to the lender / supplier 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 as amended from time to time, respectively. Powers have been delegated to Authorised Dealer Category I banks to issue necessary NOCs under FEMA as detailed in paragraph I (A) (x) *ibid*.

xii) Parking of ECB proceeds

Borrowers are permitted to either keep ECB proceeds abroad or to remit these funds to India, pending utilization for permissible end-uses.

The proceeds of the ECB raised abroad meant for Rupee expenditure in India, such as, local sourcing of capital goods, on-lending to Self-Help Groups or for micro credit, payment for spectrum allocation, repayment of rupee loan availed from domestic banks, etc. should be repatriated immediately for credit to their Rupee accounts with AD Category I banks in India. In other words, ECB proceeds meant only for foreign currency expenditure can be retained abroad pending utilization. The rupee funds, however, will not be permitted to be used for investment in capital markets, real estate or for inter-corporate lending.

ECB proceeds parked overseas can be invested in the following liquid assets (a) deposits or Certificate of Deposit or other products offered by banks rated not less than AA (-) by Standard and Poor/ Fitch IBCA or Aa3 by Moody's; (b) Treasury bills and other monetary instruments of one year maturity having minimum rating as indicated above and (c) deposits with overseas branches / subsidiaries of Indian banks abroad. The funds should be invested in such a way that the investments can be liquidated as and when funds are required by the borrower in India.

The primary responsibility to ensure that the ECB proceeds meant for Rupee expenditure in India are repatriated to India for credit to their Rupee accounts with AD Category- I banks in India is that of the borrower concerned and any contravention of the ECB guidelines will be viewed seriously and will invite penal action under the Foreign Exchange Management Act (FEMA), 1999. The designated AD bank is also required to ensure that the ECB proceeds meant for Rupee expenditure are repatriated to India immediately after drawdown.

xiii) Prepayment

(a) Prepayment of ECB up to USD 500 million may be allowed by the AD bank without prior approval of the Reserve Bank subject to compliance with the stipulated minimum average maturity period as applicable to the loan.

(b) Pre-payment of ECB for amounts exceeding USD 500 million would be considered by the Reserve Bank under the Approval Route.

xiv) Refinancing/rescheduling of an existing ECB

Existing ECB may be refinanced by raising a fresh ECB at a higher all-in-cost subject to the condition that the enhanced all-in-cost does not exceed the all-in-cost ceiling prescribed as per the extant guidelines.

An existing ECB can be rescheduled at a higher all-in-cost subject to the condition that the enhanced all-in-cost does not exceed the all-in-cost ceiling prescribed as per the extant guidelines.

xv) Debt Servicing

The designated AD bank has general permission to make remittances of installments of principal, interest and other charges in conformity with the ECB guidelines issued by Government / Reserve Bank from time to time.

xvi) Procedure

Applicants are required to submit an application in form ECB through designated AD bank to the Chief General Manager-in-Charge, Foreign Exchange Department, Reserve Bank of India, Central Office, External Commercial Borrowings Division, Mumbai – 400 001, along with necessary documents.

xvii) Foreign Currency Exchangeable Bonds

Foreign Currency Exchangeable Bond (FCEB) means a bond expressed in foreign currency, the principal and interest in respect of which is payable in foreign currency, issued by an Issuing Company and subscribed to by a person who is a resident outside India, in foreign currency and exchangeable into equity share of another company, to be called the Offered Company, in any manner, either wholly, or partly or on the basis of any equity related warrants attached to debt instruments. The FCEB may be denominated in any freely convertible foreign currency.

Eligible Issuer: The Issuing Company shall be part of the promoter group of the Offered Company and shall hold the equity share/s being offered at the time of issuance of FCEB.

Offered Company: The Offered Company shall be a listed company, which is engaged in a sector eligible to receive Foreign Direct Investment and eligible to issue or avail of Foreign Currency Convertible Bond (FCCB) or External Commercial Borrowings (ECB).

Entities not eligible to issue FCEB : An Indian company, which is not eligible to raise funds from the Indian securities market, including a company which has been restrained from accessing the securities market by the SEBI shall not be eligible to issue FCEB.

Eligible subscriber : Entities complying with the Foreign Direct Investment policy and adhering to the sectoral caps at the time of issue of FCEB can subscribe to FCEB. Prior approval of the Foreign Investment Promotion Board, wherever required under the Foreign Direct Investment policy, should be obtained.

Entities not eligible to subscribe to FCEB : Entities prohibited to buy, sell or deal in securities by the SEBI will not be eligible to subscribe to FCEB.

End-use of FCEB proceeds:

Issuing Company:

(i) The proceeds of FCEB may be invested by the issuing company overseas by way of direct investment including in Joint Ventures or Wholly Owned Subsidiaries abroad, subject to the existing guidelines on overseas investment in Joint Ventures / Wholly Owned Subsidiaries.

(ii) The proceeds of FCEB may be invested by the issuing company in the promoter group companies.

Promoter Group Companies: Promoter group companies receiving investments out of the FCEB proceeds may utilize the amount in accordance with end-uses prescribed under the ECB policy.

End-uses not permitted: The promoter group company receiving such investments will not be permitted to utilise the proceeds for investments in the capital market or in real estate in India.

All-in-cost : The rate of interest payable on FCEB and the issue expenses incurred in foreign currency shall be within the all-in-cost ceiling as specified by Reserve Bank under the ECB policy.

Pricing of FCEB: At the time of issuance of FCEB the exchange price of the offered listed equity shares shall not be less than the higher of the following two:

(i) The average of the weekly high and low of the closing prices of the shares of the offered company quoted on the stock exchange during the six months preceding the relevant date; and

(ii) The average of the weekly high and low of the closing prices of the shares of the offered company quoted on a stock exchange during the two week preceding the relevant date.

Average Maturity: Minimum maturity of FCEB shall be five years. The exchange option can be exercised at any time before redemption. While exercising the exchange option, the holder of the FCEB shall take delivery of the offered shares. Cash (Net) settlement of FCEB shall not be permissible.

Parking of FCEB proceeds abroad : The proceeds of FCEB may be retained and / or deployed overseas by the issuing / promoter group companies in accordance with the policy for the ECB or repatriated to India for credit to the borrowers' Rupee accounts with AD Category I banks in India pending utilization for permissible end-uses. It shall be the responsibility of the issuing company to ensure that the proceeds of FCEB are used by the promoter group company only for the permitted end-uses prescribed under the ECB policy. The issuing company should also submit audit trail of the end-use of the proceeds by the issuing company / promoter group companies to the Reserve Bank duly certified by the designated AD bank.

Operational Procedure – Issuance of FCEB shall require prior approval of the Reserve Bank under the Approval Route for raising ECB. The Reporting arrangement for FCEB shall be as per the extant ECB policy.

xviii) Empowered Committee

Reserve Bank has set up an Empowered Committee to consider proposals coming under the Approval Route.

II. Redemption of FCCBs

A. FCCBs are governed by the 'Issue of Foreign Currency Convertible Bonds and Ordinary Shares (through Depository Receipt Mechanism) Scheme, 1993' as amended from time to time and [FEMA Notification No.120/RB-2004 dated July 7, 2004](#). The issuance of FCCBs was brought under the ECB guidelines in August 2005 and FCCBs are also subject to all the regulations which are applicable to ECBs.

Keeping in view the need to provide a window to facilitate refinancing of FCCBs by the Indian companies which may be facing difficulty in meeting the redemption obligations, Designated AD Category - I banks have been permitted to allow Indian companies to refinance the outstanding FCCBs, under the automatic route, subject to compliance with the terms and conditions set out hereunder: -

- i. Fresh ECBs/ FCCBs shall be raised with the stipulated average maturity period and applicable all-in-cost being as per the extant ECB guidelines;

- ii. The amount of fresh ECB/FCCB shall not exceed the outstanding redemption value at maturity of the outstanding FCCBs;
- iii. The fresh ECB/FCCB shall not be raised six months prior to the maturity date of the outstanding FCCBs ;
- iv. The purpose of ECB/FCCB shall be clearly mentioned as 'Redemption of outstanding FCCBs' in Form 83 at the time of obtaining Loan Registration Number from the Reserve Bank;
- v. The designated AD - Category I bank should monitor the end-use of funds;
- vi. ECB / FCCB beyond USD 500 million for the purpose of redemption of the existing FCCB will be considered under the approval route; and
- vii. ECB / FCCB availed of for the purpose of refinancing the existing outstanding FCCB will be reckoned as part of the limit of USD 750 million available under the automatic route as per the extant norms.

Restructuring of FCCBs involving change in the existing conversion price is not permissible. Proposals for restructuring of FCCBs not involving change in conversion price will, however, be considered under the approval route depending on the merits of the proposal.

B. Buyback / Prepayment of Foreign Currency Convertible Bonds (FCCBs)

The proposal of Buyback / prepayment of FCCBs from Indian Companies may be considered subject to condition that the buyback value of the FCCBs shall be at a minimum discount of five per cent on the accreted value. In case the Indian company is planning to raise a foreign currency borrowing for buyback of the FCCBs, all FEMA rules/ regulations relating to foreign currency borrowing shall be complied with. The entire process of buyback should be completed by December 31, 2013 after which the scheme will stand discontinued.

III. REPORTING ARRANGEMENTS AND DISSEMINATION OF INFORMATION

i) Reporting Arrangements

- a. With a view to simplifying the procedure, submission of copy of loan agreement is dispensed with.
- b. For allotment of Loan Registration Number (LRN), borrowers are required to submit Form 83, in duplicate, certified by the Company Secretary (CS) or Chartered Accountant (CA) to the designated AD bank. One copy is to be forwarded by the designated AD bank to the Director, Balance of Payments Statistics Division, Department of Statistics and Information Management (DSIM), Reserve Bank of India, Bandra-Kurla Complex, Mumbai – 400 051. (Note: copies of loan agreement and offer documents for FCCB are not required to be submitted with Form 83).
- c. The borrower can draw-down the loan only after obtaining the LRN from DSIM, Reserve Bank.
- d. Borrowers are required to submit ECB-2 Return certified by the designated AD bank on monthly basis so as to reach DSIM, Reserve Bank within seven working days from the close of month to which it relates.

[Note: All previous returns relating to ECB viz. ECB 3 – ECB 6 have been discontinued with effect from January 31, 2004].

ii) Dissemination of Information

For providing greater transparency, information with regard to the name of the borrower, amount, purpose and maturity of ECB under both Automatic and Approval routes are put on the Reserve Bank's website, on a monthly basis, with a lag of one month to which it relates.

IV. STRUCTURED OBLIGATIONS

Borrowing and lending in Indian Rupees between two residents does not attract any provisions of the Foreign Exchange Management Act, 1999. In cases where a Rupee loan [fund based as well as non-fund based such as Letter of Credit / Guarantee / Letter of Undertaking (LoU) / Letter of Comfort] is granted against the guarantee provided by a non-resident, there is no transaction involving foreign exchange until the guarantee is invoked and the non-resident guarantor is required to meet the liability under the guarantee. The non-resident guarantor may discharge the liability by i) payment out of rupee balances held in India or ii) by remitting the funds to India or iii) by debit to his FCNR(B)/NRE account maintained with an AD bank in India. In such cases, the non-resident guarantor may enforce his claim against the resident borrower to recover the amount and on recovery he may seek repatriation of the amount if the liability is discharged either by inward remittance or by debit to FCNR(B)/NRE account. However, in case the liability is discharged by payment out of Rupee balances, the amount recovered can be credited to the NRO account of the non-resident guarantor.

The Reserve Bank vide its [Notification No. FEMA.29/ RB-2000 dated September 26, 2000](#) has granted general permission to a resident, being a principal debtor to make payment to a person resident outside India, who has met the liability under a guarantee. Accordingly, in cases where the liability is met by the non-resident out of funds remitted to India or by debit to his FCNR(B)/NRE account, the repayment may be made by credit to the FCNR(B)/NRE/NRO account of the guarantor provided, the amount remitted/credited shall not exceed the rupee equivalent of the amount paid by the non-resident guarantor against the invoked guarantee.

AD Category-I banks are required to furnish such details by all its branches, in a manner specified by the Reserve Bank of India (RBI) to the Chief General Manager, Foreign Exchange Department, ECB Division, Reserve Bank of India, Central Office Building, 11th floor, Fort, Mumbai – 400 001 so as to reach the Department not later than 10th day of the following month.

The facility of credit enhancement by eligible non-resident entities to domestic debt raised through issue of capital market instruments, such as Rupee denominated bonds and debentures, is available to all borrowers eligible to raise ECB under automatic route subject to the following conditions:

- i) credit enhancement should be provided by eligible non-resident entities;
- ii) the underlying debt instrument should have a minimum average maturity of three years;
- iii) prepayment and call / put options are not permissible for such capital market instruments up to an average maturity period of 3 years;
- iv) guarantee fee and other costs in connection with credit enhancement will be restricted to a maximum 2 per cent of the principal amount involved;
- v) on invocation of the credit enhancement, if the guarantor meets the liability and if the same is permissible to be repaid in foreign currency to the eligible non-resident entity, the all-in-cost ceilings, as applicable to the relevant maturity period of the Trade Credit / ECBs, as per the extant guidelines, is applicable to the novated loan.
- vi) In case of default and if the loan is serviced in Indian Rupees, the applicable rate of interest would be the coupon of the bonds or 250 bps over the prevailing secondary market yield of 5 years Government of India Security, as on the date of novation, whichever is higher;
- vii) IFCs proposing to avail of the credit enhancement facility should comply with the eligibility criteria and prudential norms laid down in the circular DNBS.PD.CC No.168/03.02.089/2009-10 dated February 12, 2010 and in case the novated loan is designated in foreign currency, the IFC should hedge the entire foreign currency exposure; and
- viii) The reporting arrangements as applicable to the ECBs would be applicable to the novated loans.

V. TAKE-OUT FINANCE

Keeping in view the special funding needs of the infrastructure sector, a scheme of take-out finance has been put in place. Accordingly, take-out financing arrangement through ECB, under the approval route, has been permitted for refinancing of Rupee loans availed of from the domestic banks by eligible borrowers in the sea port and airport, roads including bridges and power sectors for the development of new projects, subject to the following conditions:

- i. The corporate developing the infrastructure project should have a tripartite agreement with domestic banks and overseas recognized lenders for either a conditional or unconditional take-out of the loan within three years of the scheduled Commercial Operation Date (COD). The scheduled date of occurrence of the take-out should be clearly mentioned in the agreement.
- ii. The loan should have a minimum average maturity period of seven years.
- iii. The domestic bank financing the infrastructure project should comply with the extant prudential norms relating to take-out financing.

iv. The fee payable, if any, to the overseas lender until the take-out shall not exceed 100 bps per annum.

v. On take-out, the residual loan agreed to be taken out by the overseas lender would be considered as ECB and the loan should be designated in a convertible foreign currency and all the extant norms relating to ECB should be complied with.

vi. Domestic banks / Financial Institutions will not be permitted to guarantee the take-out finance.

vii. The domestic bank will not be allowed to carry any obligation on its balance sheet after the occurrence of the take-out event.

viii. Reporting arrangement as prescribed under the ECB policy should be adhered to.

VI. COMPLIANCE WITH ECB GUIDELINES

The primary responsibility to ensure that ECB raised/utilised are in conformity with the ECB guidelines and the Reserve Bank regulations / directions is that of the borrower concerned and any contravention of the ECB guidelines will be viewed seriously and will invite penal action under FEMA 1999. The designated AD bank is also required to ensure that raising / utilisation of ECB is in compliance with ECB guidelines at the time of certification.

VII. CONVERSION OF ECB INTO EQUITY

(i) Conversion of ECB into equity is permitted subject to the following conditions:

- a. The activity of the company is covered under the Automatic Route for Foreign Direct Investment or Government (FIPB) approval for foreign equity participation has been obtained by the company, wherever applicable.
- b. The foreign equity holding after such conversion of debt into equity is within the sectoral cap, if any,
- c. Pricing of shares is as per the pricing guidelines issued under FEMA, 1999 in the case of listed/ unlisted companies.

(ii) Conversion of ECB may be reported to the Reserve Bank as follows:

- a. Borrowers are required to report full conversion of outstanding ECB into equity in the form FC-GPR to the Regional Office concerned of the Reserve Bank as well as in form ECB-2 submitted to the DSIM, RBI within seven working days from the close of month to which it relates. The words "ECB wholly converted to equity" should be clearly indicated on top of the ECB-2 form. Once reported, filing of ECB-2 in the subsequent months is not necessary.
- b. In case of partial conversion of outstanding ECB into equity, borrowers are required to report the converted portion in form FC-GPR to the Regional Office concerned as well as in form ECB-2 clearly differentiating the converted

portion from the unconverted portion. The words "ECB partially converted to equity" should be indicated on top of the ECB-2 form. In subsequent months, the outstanding portion of ECB should be reported in ECB-2 form to DSIM.

VIII. CRYSTALLISATION OF ECB

AD banks desiring to crystallize their foreign exchange liability arising out of guarantees provided for ECB raised by corporates in India into Rupees, may make an application to the Chief General Manager-in-Charge, Foreign Exchange Department, External Commercial Borrowings Division, Reserve Bank of India, Central Office, Mumbai 400 001, giving full details viz., name of the borrower, amount raised, maturity, circumstances leading to invocation of guarantee /letter of comfort, date of default, its impact on the liabilities of the overseas branch of the AD bank concerned and other relevant factors.

IX. ECB UNDER THE ERSTWHILE USD 5 MILLION SCHEME

Designated AD banks are permitted to approve elongation of repayment period for loans raised under the erstwhile USD 5 Million Scheme, provided there is a consent letter from the overseas lender for such reschedulement without any additional cost. Such approval with existing and revised repayment schedule along with the Loan Key/Loan Registration Number should be initially communicated to the Chief General Manager-in-Charge, Foreign Exchange Department, ECB Division Reserve Bank of India, Central Office, Mumbai within seven days of approval and subsequently in ECB - 2.

X. RATIONALIZATION OF PROCEDURES - DELEGATION OF POWERS TO AD

Any changes in the terms and conditions of the ECB after obtaining LRN from DSIM, RBI required the prior approval of RBI. The powers have been delegated to the designated AD Category-I banks to approve the following requests from the ECB borrowers, subject to specified conditions:

(a) Changes/modifications in the drawdown/repayment schedule

Designated AD Category-I banks may approve changes/modifications in the drawdown/repayment schedule of the ECBs already availed, both under the approval and the automatic routes, subject to the condition that the average maturity period, as declared while obtaining the LRN, is maintained.

Designated AD Category-I bank may also 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 ensuring that there are no changes/modifications in the repayment schedule of the ECB, the average maturity period of the ECB is reduced as against the original average maturity period stated in the Form 83 at the time of obtaining the LRN, such reduced average maturity period complies with the stipulated minimum average maturity period as per the extant ECB guidelines, the change in all-in-cost is only due to the change in the

average maturity period and the ECB complies with the extant guidelines and the monthly ECB-2 returns in respect of the LRN have been submitted to DSIM.

The changes in the drawdown/repayment schedule should be promptly reported to the DSIM, RBI in Form 83. However, any elongation/rollover in the repayment on expiry of the original maturity of the ECB would require the prior approval of the Reserve Bank.

(b) Changes in the currency of borrowing

Designated AD Category-I banks may allow changes in the currency of borrowing, if so desired, by the borrower company, in respect of ECBs availed of both under the automatic and the approval routes, subject to all other terms and conditions of the ECB remaining unchanged. Designated AD banks should, however, ensure that the proposed currency of borrowing is freely convertible. The changes should be promptly reported to the Department of Statistics and Information Management, Reserve Bank of India in Form 83.

(c) Change of the AD bank

Designated AD Category-I banks may allow change of the existing designated AD bank by the borrower company for effecting its transactions pertaining to the ECBs subject to No-Objection Certificate (NOC) from the existing designated AD bank and after due diligence. The changes should be promptly reported to the Department of Statistics and Information Management, Reserve Bank of India in Form 83.

(d) Changes in the name of the Borrower Company

Designated AD Category-I banks may allow changes in the name of the borrower company subject to production of supporting documents evidencing the change in the name from the Registrar of Companies. The changes should be promptly reported to the Department of Statistics and Information Management, Reserve Bank of India in Form 83.

(e) Change in the recognized lender

Designated AD Category-I banks may approve the request from the ECB borrowers with respect to change in the recognized lender when the original lender is an international bank or a multilateral financial institution (such as IFC, ADB, CDC, etc.) or a regional financial institution or a Government owned development financial institution or an export credit agency or supplier of equipment and the new lender also belongs to any one of the above mentioned categories, subject to the Authorised Dealer ensuring that the new lender is a recognized lender as per the extant ECB norms, there is no change in the other terms and conditions of the ECB and the ECB is in compliance with the extant guidelines. The changes in the recognized lender should be promptly reported to the Department of Statistics and Information Management, Reserve Bank of India in Form 83

However, changes in the recognized lender in case of foreign equity holder and foreign collaborator would require the prior approval of the Reserve Bank.

(f) Cancellation of LRN

The designated AD Category-I bank may directly approach DSIM for cancellation of LRN for ECBs availed, both under the automatic and approval routes, subject to ensuring that no draw down for the said LRN has taken place and the monthly ECB-2 returns till date in respect of the LRN have been submitted to DSIM.

(g) Change in the end-use of ECB proceeds

The designated AD Category-I bank may approve requests from ECB borrowers for change in end-use in respect of ECBs availed under the automatic route, subject to ensuring that the proposed end-use is permissible under the automatic route as per the extant ECB guidelines, there is no change in the other terms and conditions of the ECB, the ECB continues to comply with the extant guidelines and the monthly ECB-2 returns till date in respect of the LRN have been submitted to DSIM. The changes in the end-use should be promptly reported to the Department of Statistics and Information Management, Reserve Bank of India in Form 83.

However, change in the end-use of ECBs availed under the approval route will continue to be referred to the Foreign Exchange Department, Central Office, Reserve Bank of India, as hitherto.

(h) 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 ensuring that the consent of the lender for reduction in loan amount has been obtained, the average maturity period of the ECB is maintained, the monthly ECB-2 returns in respect of the LRN have been submitted to the DSIM; and there are no changes in the other terms and conditions of the ECB. The changes should be promptly reported to the Department of Statistics and Information Management, Reserve Bank of India in Form 83.

(i) 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 ensuring that the consent of the lender has been obtained, there are no other changes in the terms and conditions of the ECB and the monthly ECB-2 returns in respect of the LRN have been submitted to DSIM.

PART-II

TRADE CREDITS FOR IMPORTS INTO INDIA

Trade Credits (TC) refer to credits extended for imports directly by the overseas supplier, bank and financial institution for maturity of less than three years. Depending on the source of finance, such trade credits include suppliers' credit or buyers' credit. Suppliers' credit relates to credit for imports into India extended by the overseas supplier, while buyers' credit refers to loans for payment of imports into India arranged by the importer from a bank or financial institution outside India for maturity of less than three years. It may be noted that buyers' credit and suppliers' credit for three years and above come under the category of External Commercial Borrowings (ECB) which are governed by ECB guidelines.

a) Amount and Maturity

(i) AD banks are permitted to approve trade credits for imports into India up to USD 20 million per import transaction for imports permissible under the current Foreign Trade Policy of the DGFT with a maturity period up to one year (from the date of shipment). For import of capital goods as classified by DGFT, AD banks may 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 (from the date of shipment). No roll-over/extension will be permitted beyond the permissible period.

(ii) The companies in the infrastructure sector, where "infrastructure" is as defined under the extant guidelines on External Commercial Borrowings (ECB) have been allowed to avail of trade credit up to a maximum period of five years for import of capital goods as classified by DGFT subject to conditions that the trade credit must be *ab initio* contracted for a period not less than fifteen months and should not be in the nature of short-term roll overs. However, the condition of '*ab initio*' buyers' credit would be for 6 (six) months only for trade credits availed of on or before December 14, 2012. AD banks shall not approve trade credit exceeding USD 20 million per import transaction.

b) All-in-cost Ceilings

The existing all-in-cost ceilings are as under :

Maturity period	All-in-cost ceilings over 6 months LIBOR*
Up to one year	350 basis points
More than one year and upto three years	
More than three years and upto five years	

* for the respective currency of credit or applicable benchmark

The all-in-cost ceilings include arranger fee, upfront fee, management fee, handling/processing charges, out of pocket and legal expenses, if any.

c) Guarantee

AD banks are permitted to issue Letters of Credit/guarantees/Letter of Undertaking (LoU) /Letter of Comfort (LoC) in favour of overseas supplier, bank and financial institution, up to USD 20 million per transaction for a period up to one year for import of all non-capital goods permissible under Foreign Trade Policy (except gold, palladium, platinum, Radium, silver etc.) and up to three years for import of capital goods, subject to prudential guidelines issued by Reserve Bank from time to time. The period of such Letters of credit / guarantees / LoU / LoC has to be co-terminus with the period of credit, reckoned from the date of shipment.

In respect of companies in the infrastructure sector as mentioned at para (a) (ii) above, AD banks are not permitted to issue Letters of Credit/guarantees/Letter of Undertaking (LoU) /Letter of Comfort (LoC) in favour of overseas supplier, bank and financial institution for the extended period beyond three years. (as amended vide AP DIR Circular No.28 dated 11.9.2012)

d) Reporting Arrangements

AD banks are required to furnish details of approvals, drawal, utilisation, and repayment of trade credit granted by all its branches, in a consolidated statement, during the month, in form TC (format in Annex IV) from April 2004 onwards to the Director, Division of International Finance, Department of Economic Policy and Research, Reserve Bank of India, Central Office Building, 8th floor, Fort, Mumbai – 400 001 (and in MS-Excel file through [email](#)) so as to reach not later than 10th of the following month. Each trade credit may be given a unique identification number by the AD bank.

AD banks are required to furnish data on issuance of LCs / Guarantees / LoU / LoC by all its branches, in a consolidated statement, at quarterly intervals (format in Annex V) to the Chief General Manager-in-Charge, Foreign Exchange Department, ECB Division, Reserve Bank of India, Central Office Building, 11th floor, Fort, Mumbai – 400 001 (and in MS-Excel file through [email](#)) from December 2004 onwards so as to reach the Department not later than 10th of the following month.

Appendix

List of Notification/ A.P. (DIR Series) Circulars consolidated in the Master Circular on External Commercial Borrowings and Trade Credits

Sl. No.	Notification / Circular	Date
Amendment to FEMA 3/2000 – RB dated May 3, 2000		
1	FEMA 3/2000-RB	May 3, 2000
2	FEMA 126/2004-RB	December 13, 2004
3	FEMA 127/2005-RB	January 5, 2005
4	FEMA 129/2005-RB	January 20, 2005
5	FEMA 142/2005-RB	December 6, 2005
6	FEMA.157/2007-RB	August 30, 2007
7	FEMA.194/2009-RB	June 17, 2009
8	FEMA.197/2009-RB	September 22, 2009
9	FEMA.232/2012-RB	May 30, 2012
10	FEMA.245/2012-RB	November 12, 2012
11	FEMA.246/2012-RB	November 27, 2012
12	FEMA.250/2012-RB	December 06, 2012
13	Doe	
Amendment to FEMA 8/2000 – RB dated May 3, 2000		
1	FEMA.206/2012-RB	June 01, 2010
2	FEMA.251/2012-RB	December 06, 2012

1	A.P.(DIR Series) Circular No.41	April 29, 2002
2	A.P.(DIR Series) Circular No.29	October 18, 2003
3	A.P.(DIR Series) Circular No.60	January 31, 2004
4	A.P.(DIR Series) Circular No.75	February 23, 2004
5	A.P.(DIR Series) Circular No.82	April 1, 2004
6	A.P.(DIR Series) Circular No.87	April 17, 2004
7	A.P.(DIR Series) Circular No.15	October 1, 2004
8	A.P.(DIR Series) Circular No.24	November 1, 2004
9	A.P.(DIR Series) Circular No.40	April 25, 2005
10	A.P.(DIR Series) Circular No.5	August 1, 2005
11	A.P.(DIR Series) Circular No.15	November 4, 2005
12	A.P.(DIR Series) Circular No.23	January 23, 2006
13	A.P.(DIR Series) Circular No.34	May 12, 2006
14	A.P.(DIR Series) Circular No.17	December 4, 2006
15	A.P.(DIR Series) Circular No.44	April 30, 2007
16	A.P.(DIR Series) Circular No.60	May 21, 2007
17	A.P.(DIR Series) Circular No.04	August 7, 2007
18	A.P.(DIR Series) Circular No.10	September 26, 2007
19	A.P.(DIR Series) Circular No.42	May 28, 2008
20	A.P.(DIR Series) Circular No.43	May 29, 2008

21	A.P.(DIR Series) Circular No.46	June 2, 2008
22	A.P.(DIR Series) Circular No.1	July 11, 2008
23	A.P.(DIR Series) Circular No.16	September 22, 2008
24	A.P.(DIR Series) Circular No.17	September 23, 2008
25	A.P.(DIR Series) Circular No.20	October 8, 2008
26	A.P.(DIR Series) Circular No.26	October 22, 2008
27	A.P.(DIR Series) Circular No.27	October 27, 2008
28	A.P.(DIR Series) Circular No.39	December 8, 2008
29	A.P.(DIR Series) Circular No.46	January 2, 2009
30	A.P.(DIR Series) Circular No.58	March 13, 2009
31	A.P.(DIR Series) Circular No.64	April 28, 2009
32	A.P.(DIR Series) Circular No.65	April 28, 2009
33	A.P.(DIR Series) Circular No.71	June 30, 2009
34	A.P.(DIR Series) Circular No.19	December 9, 2009
35	A.P.(DIR Series) Circular No.28	January 25, 2010
36	A.P.(DIR Series) Circular No.33	February 9, 2010
37	A.P.(DIR Series) Circular No.38	March 2, 2010
38	A.P.(DIR Series) Circular No.39	March 2, 2010
39	A.P.(DIR Series) Circular No.40	March 2, 2010
40	A.P.(DIR Series) Circular No.44	March 29, 2010
41	A.P.(DIR Series) Circular No.51	May 12, 2010
42	A.P.(DIR Series) Circular No.04	July 22, 2010
43	A.P.(DIR Series) Circular No.08	August 12, 2010
44	A.P.(DIR Series) Circular No.01	July 04, 2011
45	A.P.(DIR Series) Circular No.11	September 07, 2011
46	A.P.(DIR Series) Circular No.25	September 23, 2011
47	A.P.(DIR Series) Circular No.26	September 23, 2011
48	A.P.(DIR Series) Circular No.27	September 23, 2011
49	A.P.(DIR Series) Circular No.28	September 26, 2011
50	A.P.(DIR Series) Circular No.29	September 26, 2011
51	A.P.(DIR Series) Circular No.30	September 27, 2011
52	A.P.(DIR Series) Circular No.44	November 15, 2011
53	A.P.(DIR Series) Circular No.51	November 23,2011
54	A.P.(DIR Series) Circular No.52	November 23,2011
55	A.P.(DIR Series) Circular No.59	December 19, 2011
56	A.P.(DIR Series) Circular No.64	January 05, 2012
57	A.P.(DIR Series) Circular No.69	January 25, 2012
58	A.P.(DIR Series) Circular No70	January 25, 2012
59	A.P.(DIR Series) Circular No.75	February 07, 2012
60	A.P.(DIR Series) Circular No.85	February 29, 2012
61	A.P.(DIR Series) Circular No.99	March 30, 2012
62	A.P.(DIR Series) Circular No.100	March 30, 2012
63	A.P.(DIR Series) Circular No.111	April 20, 2012
64	A.P.(DIR Series) Circular No.112	April 20, 2012

65	A.P.(DIR Series) Circular No.113	April 24, 2012
66	A.P.(DIR Series) Circular No.119	May 07, 2012
67	A.P.(DIR Series) Circular No.134	June 25, 2012
68	A.P.(DIR Series) Circular No.136	June 26, 2012
69	A.P.(DIR Series) Circular No. 1	July 5, 2012
70	A.P.(DIR Series) Circular No. 20	August 29, 2012
71	A.P.(DIR Series) Circular No.26	September 11, 2012
72	A.P.(DIR Series) Circular No.27	September 11, 2012
73	A.P.(DIR Series) Circular No.28	September 11, 2012
74	A.P.(DIR Series) Circular No.39	October 9, 2012
75	A.P.(DIR Series) Circular No.40	October 9, 2012
76	A.P.(DIR Series) Circular No.48	November 6, 2012
77	A.P.(DIR Series) Circular No.54	November 26, 2012
78	A.P.(DIR Series) Circular No.58	December 14, 2012
79	A.P.(DIR Series) Circular No.59	December 14, 2012
80	A.P.(DIR Series) Circular No.60	December 14, 2012
81	A.P.(DIR Series) Circular No.61	December 17, 2012
81	A.P.(DIR Series) Circular No.63	December 20, 2012
83	A.P.(DIR Series) Circular No.69	January 7, 2013
84	A.P.(DIR Series) Circular No.78	January 21, 2013
85	A.P.(DIR Series) Circular No.87	March 5, 2013
86	A.P.(DIR Series) Circular No.98	April 9, 2013
87	A.P.(DIR Series) Circular No.113	June 24, 2013
88	A.P.(DIR Series) Circular No.114	June 25, 2013
89	A.P.(DIR Series) Circular No.115	June 25, 2013
90	A.P.(DIR Series) Circular No.116	June 25, 2013
91	A.P.(DIR Series) Circular No.117	June 25, 2013
92	A.P.(DIR Series) Circular No.119	June 26, 2013
93	A.P.(DIR Series) Circular No.120	June 26, 2013