



Volume VIII • Issue III • Year 2010

## DSK Legal Knowledge Center

### Updates on

- Corporate
- Banking and Finance

## CORPORATE

### A. External Commercial Borrowings (“ECB”) Policy

The Reserve Bank of India (“RBI”) has, vide its circular dated December 9, 2009<sup>1</sup>, amended the ECB policy as follows:

- § all-in-cost ceilings for ECBs under approval route will be same as that under automatic route for the loan agreements signed on or after January 1, 2010;
- § relaxation for corporates engaged in development of integrated township<sup>2</sup> to avail ECBs under approval route has been extended till December 31, 2010;

<sup>1</sup> RBI/2009-10/252 A.P. (DIR Series) Circular No.19

<sup>2</sup> as defined in the Department of Industrial Policy and Promotion press note 3/2002 ( No. 5(6)/2000-FC I dated 4<sup>th</sup> January 2002)

- § all Buyback of Foreign Currency Convertible Bonds on or after January 1, 2010 will require RBI approval;
- § RBI has allowed Non Banking Financial Companies (“NBFC”) which are exclusively involved in financing of infrastructure sector to borrow from all the recognized lenders under the approval route; and
- § RBI has now permitted eligible borrowers in the telecommunication sector to avail of ECB for the purpose of payment for Spectrum allocation.

Further, the RBI, vide its circular dated January 25, 2010<sup>3</sup>, has made one-time relaxation in the end-use conditions of the ECB policy for payment for spectrum allocation in the

<sup>3</sup> RBI/2009-10/ 292 A.P. (DIR Series) Circular No. 28

telecommunication sector. Eligible borrowers are now allowed to refinance the rupee loans taken for payment of spectrum fees to the Government with a long-term ECB under approval route, subject to the fulfillment of certain conditions as stipulated in the said circular.

For more information please refer to

<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/APDIR091209.pdf>

<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/APD28250110.pdf>

#### B. Exchange Earner's Foreign Currency (EEFC) Account – Clarification

RBI, vide circular dated December 29, 2009<sup>4</sup>, has clarified that all categories of foreign exchange earners are allowed to credit up to 100% of their foreign exchange earnings in their EEFC Account including SEZ developers.

For more information please refer to

<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/EEFC291209.pdf>

#### C. Ready Forward Contracts in Corporate Debt Securities

RBI, vide notification dated January 8, 2010<sup>5</sup>, introduced repo in corporate bonds. Repo in Corporate Debt Securities (Reserve Bank) Directions, 2010 have been issued by the RBI and are annexed to the said notification. The said directions shall come into force with effect from March 01, 2010.

For more information please refer to

<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/ICDSRD12012010.pdf>

#### D. Purchase of Immovable Property in India by Persons of Indian Origin ("PIO") – Amendment of the definition

RBI, vide its circular dated January 13, 2009<sup>6</sup>, has amended the definition of 'PIO' to include the words 'mother' and 'grandmother' in Regulation 2(c) of the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India), Regulations, 2000. Hence, an individual either of whose mother or whose grandmother was a citizen of India by virtue of

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<sup>4</sup> RBI /2009-10/275 A.P. (DIR Series) Circular No. 22

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<sup>5</sup> RBI/2009-10/284 IDMD.DOD. 05 /11.08.38/2009-10

<sup>6</sup> RBI/2009-10/ 286 A.P. (DIR Series) Circular No.25

the Constitution of India or the Citizenship Act, 1955, would also be a PIO.

For more information please refer to

<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/APDI25130110.pdf>

E. Press Note 8 (2009 Series)

The Ministry of Commerce & Industry, Department of Industrial Policy & Promotion (“DIPP”) has issued Press Note No. 8 (2009 Series) allowing, with immediate effect<sup>7</sup>, all payments of royalty, lumpsum fee for transfer of technology and payments for use of trademark/brand name on the automatic route. All such payments will be subject to Foreign Exchange Management (Current Account Transaction) Rules, 2000 as amended from time to time.

A suitable post-reporting system for technology transfer/collaborations and use of trade mark/brand name will be notified by the Government separately.

For more information please refer to

<http://siadipp.nic.in/policy/changes.htm>

F. Draft Press Note (2010)

DIPP has published on its website a draft press note titled ‘FDI Regulatory Framework’. DIPP has sought comments on the same till January 30, 2010. The draft press note has been formulated with the intention of formulating a regulatory framework which is transparent, understandable, and simple. The intent is to reduce the regulatory burden and promote foreign direct investment. The Government proposes to issue such a press note every six months i.e. twice a year in April and October each, which will incorporate and reflect all the changes in the regulations during the last intervening period of six months.

For the full text of the draft press note please refer to

<http://siadipp.nic.in/policy/changes.htm>

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<sup>7</sup> December 17, 2009

G. Guidelines on trading of Currency Futures in Recognized Stock Exchanges

Currently, persons resident in India are permitted only to trade in US Dollar (“USD”) - Indian Rupee (“INR”) currency futures contracts in recognized stock exchanges. In order to facilitate direct hedging of currency risk in other currency pairs as well, RBI, vide its circular dated January 19, 2010<sup>8</sup>, has permitted recognized stock exchanges to offer currency futures contracts in the currency pairs of Euro-INR, Japanese Yen-INR and Pound Sterling-INR, in addition to the USD-INR contracts, with immediate effect.

For more information please refer to

<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/CFAP190110.pdf>

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**BANKING AND FINANCE**

A. Submission of statutory auditor’s certificate to the RBI by NBFCs

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<sup>8</sup> RBI/2009-10/290 A.P. (DIR Series) Circular No. 27

Under the NBFC Prudential Norms<sup>9</sup>, every NBFC is required to submit a certificate from its statutory auditor to the RBI. RBI, vide notification dated October 22, 2009<sup>10</sup>, has extended the time for such submission. NBFCs are now required to submit the certificate within one month from the date of finalization of the balance sheet and in any case, not later than December 30th of that year.

For more information please refer to

<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/SACB221009.pdf>

B. Amendment of Regulation 5(1)(b) of the Credit Information Companies Regulations, 2006 (“CIC Regulations”)

Regulation 5 of the CIC Regulations governs the granting of the certificate of registration by the RBI to an applicant. RBI, vide notification dated October 23, 2009<sup>11</sup>, has amended Regulation

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<sup>9</sup> Non-Banking Financial (Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007 and Non-Banking Financial (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007

<sup>10</sup> RBI/2009-10/187 DNBS (PD) CC. No. 162/03.05.002/2009-2010

<sup>11</sup> DBOD.DL. BC 49 /20.16.040/ 2009-10

5(1)(b). Pursuant to the amendment, RBI may grant further extension of time (further extension from the three months previously granted at the time of giving the in-principle approval), not exceeding three months at a time, for the purpose of fulfillment of the conditions stipulated in the 'in-principle approval' where RBI is satisfied with respect to the cause for failure of the applicant to fulfill such conditions within the time so provided. However, the total time of extension granted shall not exceed a period of twelve months.

For more information please refer to

<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/AMEND231009.pdf>

- C. Directions for opening and operation of Accounts and settlement of payments for electronic payment transactions involving intermediaries (“Directions”)

RBI, vide notification dated November 24, 2009<sup>12</sup>, has issued the Directions in order to safeguard the interests of customers and to ensure that the payments made by them using electronic/online payment modes are duly accounted for by the

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<sup>12</sup> RBI/2009-10/231 DPSS.CO.PD.No.1102 /02.14.08/ 2009-10

intermediaries receiving such payments and remitted to the accounts of the merchants who have supplied the goods and services without undue delay. The Directions are to be complied by all banks, payment system providers and system participants. The Directions govern, among others, the following:

- § maintenance of accounts for collection of payments;
- § permitted credits and debits from such accounts;
- § settlements of funds to the merchants; and
- § treatment of balances by the banks.

For the full text of the Directions please refer to

<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/DOIPS241109.pdf>

- D. Capital Adequacy - Risk weightage on Lending through Collateralized Borrowing and Lending Obligation (“CBLO”)

RBI, vide notification dated December 1, 2009<sup>13</sup>, has clarified that the counterparty credit risk, arising out of exposure of NBFCs to Clearing Corporation of India Ltd. (“CCIL”) on account of securities financing transactions (“CBLO”) will carry a risk

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<sup>13</sup> RBI/2009-10/239 DNBS.PD/CC.No.165/03.05.002/2009-10

weight of zero. The deposits / collaterals kept by NBFCs with CCIL will attract a risk weight of 20%.

For more information please refer to

<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/CBL011209.pdf>

- E. Banks' Exposure to Capital Market – Loans extended by banks to Mutual Funds and Issue of Irrevocable Payment Commitments ("IPCs")

RBI, vide notification dated December 23, 2009<sup>14</sup>, has extended the transition period allowed to banks to comply with the requirements stipulated in notification dated December 14, 2007<sup>15</sup> (governing the matter as titled above) to June 30, 2010.

For more information please refer to

<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/IPC231209.pdf>

- F. Disclosure in Balance Sheet – Bancassurance Business

RBI, vide notification dated January 7, 2010<sup>16</sup>, has directed all Scheduled Commercial Banks (excluding RRBs) to disclose in the 'Notes to Accounts', from the year ending March 31, 2010, the details of fees/remuneration received in respect of the bancassurance business undertaken by them.

For more information please refer to

<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/CRD070110.pdf>

- G. Retail Issue of Subordinated Debt for Raising Tier II Capital

The RBI has, vide its circular dated January 13, 2009<sup>17</sup>, directed commercial banks to adhere to certain conditions as laid down in the circular while issuing subordinated debt to the retail investors. The following are conditions to be followed by the issuing bank –

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<sup>14</sup> RBI/2009-10/272 DBOD.Dir.BC. 66 /13.03.00/2009 -10

<sup>15</sup> RBI.No.2007-08/210 DBOD. Dir. BC. 57/13.03.00/2007 -2008

<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/82108.pdf>

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<sup>16</sup> RBI/2009-10/283 DBOD.No.FSD.BC. 67 /24.01.001/2009-10

<sup>17</sup> RBI/2009-10/287 DBOD.BP.BC.No. 69 / 21.01.002/ 2009 -10

- § get a specific sign-off (As given in the circular) from the investors, to be incorporated in the common application form of the proposed debt issue;
- § banks should not use its Fixed Deposit rate as benchmark for floating rate instruments;
- § all the publicity material, application form and other communication with the investors should clearly state how a subordinated bond is different from fixed deposit and particularly to mention that it is not covered by deposit insurance.

For more information please refer to

<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/RISDSBI13012010.pdf>

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