

RESERVE BANK OF INDIA
(EXCHANGE CONTROL DEPARTMENT)
CENTRAL OFFICE
Mumbai 400 001

Notification No.FEMA 3 /2000-RB dated 3rd May 2000

In exercise of the powers conferred by clause (d) of Sub-Section (3) of Section 6, sub-section (2) of Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank makes the following regulations for borrowing or lending in foreign exchange by a person resident in India; namely:

1. Short Title and Commencement:-

- (i) These Regulations may be called the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000.
- (ii) They shall come into force on 1st day of June, 2000.

2. Definitions:-

In these regulations, unless the context otherwise requires -

- a) 'Act' means the Foreign Exchange Management Act, 1999 (42 of 1999);.
- b) 'authorised dealer' means a person authorised as an authorised dealer under sub-section (1) of section 10 of the Act;
- c) 'EEFC account', 'RFC account' mean the accounts referred to in the Foreign Exchange Management (Foreign currency accounts by a person resident in India) Regulations, 2000;
- d) 'FCNR (B) account', 'NRE account' mean the accounts referred to in the Foreign Exchange Management (Deposit) Regulations, 2000;
- e) 'Indian entity' means a company or a body corporate or a firm in India;

- f) 'Joint Venture abroad' means a foreign concern formed, registered or incorporated in a foreign country in accordance with the laws and regulations of that country and in which investment has been made by an Indian entity;
- g) 'Schedule' means the Schedule to these Regulations;
- h) 'Wholly owned subsidiary abroad' means a foreign concern formed, registered or incorporated in a foreign country in accordance with the laws and regulations of that country and whose entire capital is owned by an Indian entity;
- i) the words and expressions used but not defined in these Regulations shall have the same meaning respectively assigned to them in the Act.

3. Prohibition to Borrow or Lend in Foreign Exchange:-

Save as otherwise provided in the Act, Rules or Regulations made thereunder, no person resident in India shall borrow or lend in foreign exchange from or to a person resident in or outside India:

Provided that the Reserve Bank may, for sufficient reasons, permit a person to borrow or lend in foreign exchange from or to a person resident outside India.

4. Borrowing and Lending in Foreign Exchange by an Authorised dealer:-

(1) An authorised dealer in India or his branch outside India may lend in foreign currency in the circumstances and subject to the conditions mentioned below, namely:

- i) A branch outside India of an authorised dealer being a bank incorporated or constituted in India, may extend foreign currency loans in the normal course of its banking business outside India;

- ii) An authorised dealer may grant loans to his constituents in India for meeting their foreign exchange requirements or for their rupee working capital requirements or capital expenditure subject to compliance with prudential norms, interest rate directives and guidelines, if any, issued by Reserve Bank in this regard;

- iii) An authorised dealer may extend credit facilities to a wholly owned subsidiary abroad or a joint venture abroad of an Indian entity;

Provided that not less than 51 per cent of equity in such subsidiary or joint venture is held by the Indian entity subject to compliance with the Foreign Exchange Management (Transfer and Issue of Foreign Security) Regulations, 2000;

iv) An authorised dealer may, in his commercial judgment and in compliance with the prudential norms, grant loans in foreign exchange to his constituent maintaining EEFC Account or RFC Account, against the security of funds held in such account.

v) A branch outside India of an authorised dealer may extend foreign currency loans against the security of funds held in NRE/FCNR deposit accounts maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2000.

vi) Subject to the directions or guidelines issued by the Reserve Bank from time to time, an authorised dealer in India may extend foreign currency loans to another authorised dealer in India.

2) An authorised dealer in India may borrow in foreign currency in the circumstances and subject to the conditions mentioned below, namely:

i) An authorised dealer may borrow from his Head Office or branch or correspondent outside India upto fifteen per cent of his unimpaired Tier I capital or US\$ 10 million, whichever is more, subject to such conditions as the Reserve Bank may direct.

Explanation:

For the purpose of clause (i), the aggregate loans availed of by all branches in India of the authorised dealer from his Head Office, all branches and correspondents outside India, shall be reckoned.

ii) An authorised dealer may borrow in foreign currency without limit from his head Office or branch or correspondent outside India for the purpose of replenishing his rupee resources, provided that -

a) the funds borrowed are utilised for his own business operations and are not invested in call money or similar other markets;

b) no repayment of the loan is made without the prior approval of Reserve Bank, which may be granted only if the authorised dealer has no borrowings outstanding either from Reserve Bank or other bank or financial institution in India and is clear of all money market borrowings for a period of at least four weeks prior to the week in which the repayment is made.

iii) A branch outside India of an authorised dealer being a bank incorporated or constituted in India, may borrow in foreign currency in the normal course of its banking business outside India, subject to the directions or guidelines issued by the Reserve Bank

from time to time, and the Regulatory Authority of the country where the branch is located.

iv) An authorised dealer may borrow in foreign currency from a bank or a financial institution outside India, for the purpose of granting pre-shipment or post-shipment credit in foreign currency to his exporter constituent, subject to compliance with the guidelines issued by the Reserve Bank in this regard.

5. Borrowing and Lending in Foreign Exchange by persons other than authorised dealer:-

(1) An Indian entity may lend in foreign exchange to its wholly owned subsidiary or joint venture abroad constituted in accordance with the provisions of Foreign Exchange Management (Transfer or issue of foreign security) Regulations, 2000.

(2) A person resident in India may borrow, whether by way of loan or overdraft or any other credit facility, from a bank situated outside India, for execution outside India of a turnkey project or civil construction contract or in connection with exports on deferred payment terms, provided the terms and conditions stipulated by the authority which has granted the approval to the project or contract or export in accordance with the Foreign Exchange Management (Export of goods and services) Regulations, 2000.

(3) An importer in India may, for import of goods into India, avail of foreign currency credit for a period not exceeding six months extended by the overseas supplier of goods, provided the import is in compliance with the Export Import Policy of the Government of India in force.

(4) A person resident in India may lend in foreign currency out of funds held in his EEFC account, for trade related purposes to his overseas importer customer:

Provided that,-

a) the aggregate amount of such loans outstanding at any point of time does not exceed US\$ 3 million; and

b) where the amount of loan exceeds US\$ 25,000, a guarantee of a bank of international repute situated outside India is provided by the overseas borrower in favour of the lender.

(5) Foreign currency loans may be extended by Export Import Bank of India, Industrial Development Bank of India, Industrial Finance Corporation of India, Industrial Credit and Investment Corporation of India Limited, Small Industries Development Bank of India Limited, or any other institution in India to their constituents in India out of foreign currency borrowings raised by them with the approval of the Central Government for the purpose of onward lending.

6. Other borrowings in foreign exchange with prior approval of Reserve Bank or Government of India:-

(1) A person resident in India who desires to raise foreign currency loans of the nature or for the purposes specified in the Schedule and who satisfies the eligibility and other conditions specified in that Schedule, may apply to the Reserve Bank for approval to raise such loans.

(2) The Reserve Bank may grant its approval subject to such terms and conditions as it may consider necessary;

Provided that while considering the grant of approval, the Reserve Bank shall take into account the overall limit stipulated by it, in consultation with the Central Government, for availment of such loans by the persons resident in India.

(3) Any other foreign currency loan proposed to be raised by a person resident in India, which falls outside the scope of the Schedule, shall require the prior approval of the Central Government.

(P.R. GOPALA RAO)
Executive Director

SCHEDULE

[See Regulation 6]

1. The borrowing in foreign exchange by a person resident in India may be under any of the Schemes set out in this Schedule.
2. The application for the approval of the Reserve Bank under Regulation 6 for borrowing under any of the Schemes shall be made in Form ECB annexed to these Regulations.
3. The borrowing in foreign exchange may be from an overseas bank/export credit agency/supplier of equipment or foreign collaborator, foreign equity holder, NRI, OCB, corporate/institution with a good credit rating from internationally recognised credit rating agency, or from international capital market by way of issue of bonds, floating rate notes or any other debt instrument by whatever name called.
4. The borrower shall not utilise the funds borrowed under any of these Schemes for investment in stock market or in real estate business.

(i) Short term loan scheme

- a) Foreign currency credit extended by the overseas supplier of goods to an importer of goods for financing import of goods into India, provided the period of maturity of credit is more than six months but less than three years.
- b) Foreign currency loan/credit extended to an importer in India for financing imports into India, by any bank or financial institution outside India, provided the period of maturity of loan/credit is less than three years.

(ii) Borrowing under US dollar Five Million Scheme

Borrowing in foreign exchange upto US\$ Five Million or its equivalent by an Indian entity for general corporate purposes at a simple minimum maturity of three years.

(iii) Borrowing under US dollar Ten Million Scheme

Borrowing in foreign exchange not exceeding US\$ Ten Million or its equivalent by an Indian entity for the following purposes :

a) Borrowing for Financing of Infrastructure Projects

- (i) Borrowing in order to finance equity investment in a subsidiary/joint venture company promoted by the Indian entity for implementing infrastructure projects, provided that the minimum average maturity of loan is three years. In case the loan is to be raised by more than one promoter

entity for a single project, the aggregate of loan by all promoters should not exceed US\$ 10 million.

- (ii) Foreign currency loan raised by an Indian entity for financing infrastructure project, provided that the minimum average maturity of loan is not less than three years.

b) Borrowings by Exporter/Foreign Exchange Earner

Borrowing in foreign exchange by an exporter/foreign exchange earner upto three times of the average amount of his annual foreign exchange earnings during the previous three years subject to a maximum of US\$ Ten million or its equivalent, with a minimum average maturity of three years.

c) Long term Borrowings

Borrowing for general corporate purposes at the minimum average maturity of eight years.

(iv) Scheme for raising loans from NRIs on repatriation basis

Borrowings not exceeding US\$ 2,50,000 or its equivalent in foreign exchange by an individual resident in India from his close relatives resident outside India, subject to the conditions that –

- a) the loan is free of interest;
- b) the minimum maturity period of the loan is seven years;
- c) The amount of loan is received by inward remittance in free foreign exchange through normal banking channels or by debit to the NRE/FCNR account of the non-resident lender;
- d) The loan is utilised for the borrower's personal purposes or for carrying on his normal business activity but not for carrying on agricultural/plantation activities, purchase of immovable property or shares/debentures/bonds issued by companies in India or for re-lending.

Explanation:

“Close relative” means relatives as defined in Section 6 of the Companies Act, 1956.

FORM ECB

Application for permission to raise External Commercial Borrowings under Short Term Loan/Credit/USD 5/10 million Scheme

Instructions:

The application complete in all respects should be submitted in duplicate by the applicant through the authorised dealer designated by him to handle the matters relating to the foreign currency borrowings/credit to the Chief General Manager, Exchange Control Department, Central Office, ECB Division, Reserve Bank of India, Mumbai 400 001. In respect of short term loan/credit for imports, it should be submitted through the authorised dealer through whom the import documents have been received/will be received.

Documentation:

Following documents, (as relevant) duly certified by authorised dealer, should be forwarded with the application:

- (i) A copy of offer letter from the overseas lender/supplier furnishing complete details of the terms and conditions of proposed loan/credit arrangement.
 - (ii) Copies of FIPB/SIA/CCEA approvals wherever applicable.
 - (iii) In case the application is being made under Exporters'/Foreign Exchange Earners' Scheme, bank certificates in respect of export realisation for past 3 years.
 - (iv) If the applicant is NBFC, a copy of credit rating awarded by a recognised credit rating agency and copy of RBI registration certificate.
 - (v) A copy of the import contract, proforma/commercial invoice/Bill of Lading.
 - (vi) A report from an international credit rating agency of repute, if the lender is other than the recognised category as per ECB Guidelines issued by the Government, from time to time.
 - (vii) In case the payment for import is through Letter of Credit, a copy of L/C with amendments, if any.
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PART- A- CATEGORY OF ECB APPLICATION

The application is being submitted under following scheme :

(Please put (X) in the correct box)

- | | | |
|-----|--|--------------------------|
| (1) | Under short term credit/loan | <input type="checkbox"/> |
| (2) | Under USD 5 million Scheme | <input type="checkbox"/> |
| (3) | Under USD 10 million Scheme | <input type="checkbox"/> |
| (a) | Exporters' /Foreign Exchange Earners' Scheme | <input type="checkbox"/> |
| (b) | Long Term Borrowers' Scheme | <input type="checkbox"/> |
| (c) | Infrastructure Projects | <input type="checkbox"/> |
| (e) | Other (Please specify) | <input type="checkbox"/> |

PART-B- GENERAL INFORMATION ABOUT THE BORROWER

1. Name of the applicant
(BLOCK LETTERS)

Address

-
- | | | | | |
|----|---------------------------------------|-------------------|------------------|--|
| 2. | Status of the applicant firm/ company | Private
Sector | Public
Sector | NBFC
(Indicate RBI
Registration
Number) |
|----|---------------------------------------|-------------------|------------------|--|
-

3. Details of foreign Currency Loans (ECB) availed of and/or approval obtained by the applicant during past 3 years under US\$ 5 Million Scheme

RBI/GOI approval No. & date	Amount outstanding	Due date of final repayment

4. Details of ECB parked abroad

Sr. No.	Name of the bank	Amount in USD equivalent	No. & date of RBI permission obtained for parking funds abroad and validity period thereof

PART-C-INFORMATION ABOUT THE PROPOSED LOAN/CREDIT

1. Details of the loan/credit

Currency	Amount	US\$ equivalent
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Purpose of the loan

Nature of ECB [Please put (x) in the appropriate box]

- (i) Suppliers' Credit
- (ii) Buyers' Credit
- (iii) Syndicated Loan
- (iv) Export Credit
- (v) Loan from foreign Collaborator/ equity holder
- (vi) FRN/ Bonds
- (vii) Others (please specify)

Terms and conditions of the loan

- (i) Rate of interest
- (ii) Up front fee
- (iii) Management fee
- (iv) Other charges, if any (Please specify)
- (v) All-in –cost
- (vi) Commitment fee
- (vii) Rate of Penal interest
- (viii) Period of loan
- (ix) Grace/ moratorium period
- (x) Repayment terms (half yearly/ annually/bullet)
- (xi) Average maturity

2. Details of the lender

Name and address of the lender/supplier

3. Nature of security to be provided, if any.

PART D – INFORMATION ABOUT DRAW DOWN AND REPAYMENTS

Proposed schedule			
Dawn down		Repayment/payment	
Month And Year	Amount	Principal	Interest

Part –E-Additional Information required for applications under Short Term Credit/Loan

-
- | | Description | Value |
|----|--|--------------|
| 1. | Particulars of commodity (ies) to be imported | |
| 2. | Details of imports made/to be made | |
| | (A) (i) Payment Terms | |
| | (ii) Due date of the import bill | |
| | (iii) Extension sought upto | |
| | (iv) If import has already been made | |
| | Value assessed as per Bill of Entry | |
| | (Please enclose a copy) | |
| | (B) If goods are yet to be received | |
| | (i) Date of shipment | |
| | (ii) Whether goods have been sold on high | |
| | Seas or any such sale is contemplated? | |
| 3. | Period upto which statement giving details of drawals, utilisation & outstanding has been submitted to RBI for loans raised in the past. | |
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**PART F – ADDITIONAL INFORMATION IN RESPECT OF
ECB UNDER USD 5./10 MILLION SCHEME**

1. Details of the project

(i)	Total project cost in USD	
(ii)	Total ECB as a % of project cost	

2. **Export realisation** (USD equivalent) of the applicant during the last 3 years
 [To be furnished only in case of applications under Exporters’/Foreign Exchange Earners’ Scheme]

PART G – CERTIFICATIONS

1. By the applicant

We hereby certify that -

- (i) the particulars given above are true and correct to the best of our knowledge and belief.
- (ii) the credit/loan to be raised will be utilised for the purpose for which it is being applied for vide this application and shall not be utilised for investment in stock market and real estate.

Place _____		_____ (Signature of Authorised Official of the applicant)
Date _____	STAMP	Name: _____ Designation _____

2. By the authorised dealer –

We hereby certify that –

- (i) the applicant is our customer.
- (ii) we have scrutinised the application and the original letter of offer from the lender/supplier and also all the documents relating to the import/proposed import, proposed borrowing /financing arrangement and have found the same to be in order.

		_____ (Signature of Authorised Official)
Place _____		Name _____
Date _____	STAMP	Name of the Bank/branch _____
		A.D.Code _____