UPDATION ON EXTERNAL COMMERCIAL BORRWOINGS: Benefit for infrastructure sector as per Budget announcements and other government policy.

In view of the thrust given to the development of the infrastructure sector in pre budget announcements and in budget proposal, government has provided the ECB route for infrastructure sector by easing up norms for ECB, additions in Infrastructure sector definition

and introduction of Infrastructure Finance Companies (IFCs).

To give effects of above announcements RBI has issued three separate policy circulars. Text of these circulars are given for reference.

External Commercial Borrowings (ECB) Policy

A.P. (DIR Series) Circular No. 38, dated 2-3-2010

Attention of Authorised Dealer Category - I (AD Category - I) banks is invited to the A.P. (DIR Series) Circular No. 5 dated August 1, 2005 and A.P. (DIR Series) Circular No. 20 dated October 8, 2008 relating to External Commercial Borrowings (ECB).

2. As per the extant ECB policy, infrastructure sector is defined as (i) power, (ii) telecommunication, (iii) railways, (iv) road including bridges, (v) sea port and airport, (vi) industrial parks, (vii) urban infrastructure (water supply, sanitation and sewage projects) and (viii) mining, exploration and refining.

3. As announced in para 54 of the Union Budget for the Year 2010-11, it has been decided to expand the definition of infrastructure sector, for the purpose of availing of ECB, to include “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”. Accordingly, the infrastructure sector would henceforth be defined to include (i) power, (ii) telecommunication, (iii) railways, (iv) road 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.

4. All other aspects of the ECB policy, such as, USD 500 million limit per company per financial year under the automatic route, eligible borrower, recognised lender, end-use, average maturity period, prepayment, refinancing of existing ECB, reporting arrangements and terms and conditions stipulated in the A.P. (DIR Series) Circulars shall remain unchanged.

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

6. The directions contained in this circular have been issued under sections 10(4) and 11 (1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and is without prejudice to permissions/approvals, if any, required under any other law.

External Commercial Borrowings (ECB) Policy

A.P. (DIR Series) Circular No. 39, dated 2-3-2010

Attention of Authorised Dealer Category - I (AD Category - I) banks is invited to the A.P. (DIR Series) Circular No. 5 dated August 1, 2005, A.P. (DIR Series) Circular No. 46 dated January 2, 2009, A.P. (DIR Series) Circular No. 71 dated June 30, 2009 and para 2 (iv) of A.P. (DIR Series) Circular No. 19 dated December 9, 2009 relating to the External Commercial Borrowings (ECB).

2. As per the extant ECB policy, Non-Banking Finance Companies (NBFCs), which are exclusively engaged in financing of infrastructure sector, are permitted to avail of ECB from the recognized lender category including international banks, under the approval route, for on-lending to the infrastructure sector, as defined in the extant ECB policy.

3. In view of the thrust given to the development of the infrastructure sector, a separate category of NBFCs viz. Infrastructure Finance Companies (IFCs) has been introduced in terms of the guidelines contained in circular DNBS.PD.CC No. 168/03.02.089/2009-10 dated February 12, 2010. In view of the new category of NBFCs being in place, the dispensation provided in para 2 above is not considered necessary. Accordingly, proposals for ECBs by the IFCs, which have been classified as such by the Reserve Bank, for on-lending to the infrastructure sector, as defined in the extant ECB policy may be considered under the approval route, subject to their complying with the following conditions:

i) compliance with the norms prescribed in the aforesaid DNBS Circular dated February 12, 2010;

ii) hedging of the currency risk in full; and

iii) the total outstanding ECBs including the proposed ECB not exceeding 50 per cent of the Owned Funds.

The AD Category-I bank should certify the compliance with the above conditions by the IFCs.

4. All other aspects of ECB policy such as USD 500 million limit per company per financial year under the automatic route, eligible borrower, recognised lender, end-use, average maturity period, prepayment, refinancing of existing ECB, reporting arrangements and terms and conditions stipulated in the A.P. (DIR Series) Circulars shall remain unchanged.

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

6. The directions contained in this circular have been issued under sections 10(4) and 11 (1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and is without prejudice to permissions/approvals, if any, required under any other law.

External Commercial Borrowings (ECB) Policy - Structured Obligations

A.P. (DIR Series) Circular No. 40, dated 2-3-2010

Attention of Authorised Dealer Category - I (AD Category - I) banks is invited to Notification No. FEMA 29 / 2000-RB dated September 26, 2000 viz. Payment to person resident outside India on invocation of guarantee, A.P. (DIR Series) Circular No. 28 dated March 30, 2001 and A.P. (DIR Series) Circular No. 5 dated August 1, 2005 relating to External Commercial Borrowings (ECB).

2. Borrowing and lending of Indian Rupees between two persons resident in India does not attract the provisions of the Foreign Exchange Management Act, 1999. In case where a Rupee loan is granted against the guarantee provided by a person resident outside India, 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 Reserve Bank vide Notification No. FEMA 29/2000-RB dated September 26, 2000 has granted general permission to a person resident in India, being a principal debtor, to make payment to a person resident outside India, who has met the liability under a guarantee.

3. As per the extant policy, domestic Rupee denominated structured obligations have been permitted to be credit enhanced by non-resident entities under the approval route. In view of the growing needs of funds in the infrastructure sector, the existing norms have been reviewed and it has been decided to put in place a comprehensive policy framework on credit enhancement to domestic debt as indicated below:

4. It has since been decided that the facility of credit enhancement by eligible non-resident entities may be extended to domestic debt raised through issue of capital market instruments, such as debentures and bonds, by Indian companies engaged exclusively in the development of infrastructure and by the Infrastructure Finance Companies (IFCs), which have been classified as such by the Reserve Bank in terms of the guidelines contained in the circular DNBS.PD. CC No. 168 / 03.02.089 / 2009-10 dated February 12, 2010, subject to the following conditions:

i) credit enhancement will be permitted to be provided by multilateral / regional financial institutions and Government owned development financial institutions;

ii) the underlying debt instrument should have a minimum average maturity of seven years;

iii) prepayment and call / put options would not be permissible for such capital market instruments up to an average maturity period of 7 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, would apply to the novated loan. Presently, the all-in-cost ceilings, depending on the average maturity period, are applicable as follows:

Average maturity period of the loan on invocation	**All-in-cost ceilings over 6 month Libor***
Up to 3 years	200 basis points
Three years and up to five years	300 basis points
More than five years	500 basis points

*for the respective currency of borrowing or applicable benchmark 3

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.

5. Necessary amendments to the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 dated May 3, 2000 are being issued separately wherever necessary.

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

7. The directions contained in this circular have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and is without prejudice to permissions/approvals, if any, required under any other law.