



RESERVE BANK OF INDIA
Foreign Exchange Department
Central Office
Mumbai - 400 001

RBI/2009-10/335
A.P. (DIR Series) Circular No. 40

March 02, 2010

To

All Category - I Authorised Dealer Banks

Madam / Sir,

**External Commercial Borrowings (ECB) Policy –
Structured Obligations**

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

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.

Yours faithfully,

(Salim Gangadharan)

Chief General Manager-in-Charge