IN THE NEWS

May 2008

1. Revision in External Commercial Borrowing ("ECB") policy

1.1 By the notification (*A.P. (DIR Series) Circular No.43*) dated May 29, 2008, borrowers in the infrastructure sector have been allowed to avail ECB up to US$ 100 million under the approval route.

1.2 In the case of other borrowers, the existing limit of US$ 20 million rupee expenditure for permissible end-uses under the approval route has been enhanced to US$ 50 million.

In both the above cases, prior approval of the Reserve Bank of India (**"RBI"**) is still required.

1.3 In addition to the above, the all-in-cost ceilings in respect of ECB have also been modified as follows. These changes will be applicable under both the automatic and the approval route.

Average Maturity period	All-in-cost ceilings over 6 months	
	Existing	Revised
Three years and up to five years	150 bps	200 bps
More than five years	250bps	350 bps

The other aspects of ECB policy vis-à-vis eligible borrower, recognized lender, end-use of foreign currency expenditure for import of capital goods and overseas investments, average maturity period, prepayment, refinancing of existing ECB and reporting arrangements remain unchanged.

2. Central Sales Tax ("CST") rate reduced

The Ministry of Finance, Department of Revenue issued a notification on May 30, 2008 to bring into effect the new reduced rate of CST of 2% on inter-state sale of goods from June 1, 2008. This reduction of CST from 3% to 2% forms a part of the roadmap for phasing out CST by March 31, 2010 and introducing the new system of Goods & Services Tax.

3. Supreme Court ("SC") verdict on international commercial arbitration

In a recent case of TDM Infrastructure (P) Ltd (**"Petitioner"**) v UE Development India (P) Ltd (**"Respondent"**), the SC has held that domestic companies cannot seek international commercial arbitration as defined under the Arbitration and Conciliation Act, 1996 (**"the Act"**). SC held that "the intention of the legislature appears to be clear that Indian nationals should not be permitted to derogate from Indian law."

In this case, the parties were registered and incorporated in India. The directors and shareholders of the Petitioner were residents of Malaysia and the Board of directors also sat at Malaysia. The Respondent subcontracted a portion of the project that was awarded to it by the National Highway Authority of India to the Petitioner. The arbitration clause in the sub-contract stated that the venue of the arbitration shall be New Delhi and the Act shall govern the contract. Disputes arose between the two contracting companies and they could not agree on a common arbitrator. Hence, the Petitioner approached the SC seeking the appointment of an arbitrator by virtue of Section 11(5) and 11(9) of the Act, under which the Chief Justice of India (**"CJI"**) or any person or institution designated by CJI can appoint an arbitrator. According to the Petitioner, as the control and management of the Company was in Malaysia, the SC alone had the jurisdiction to appoint an arbitrator.

However, the Respondent argued that since the Petitioner was registered in India, the SC has no jurisdiction to pass an order for appointing an arbitrator. It insisted that the Petitioner in law must be held to be situated in India notwithstanding that the directors are foreign nationals and, therefore, the dispute is not a case of international commercial arbitration as defined under the Act. SC agreed with this view and explained that section 2(1) (f) (ii) of the Act (i.e. at least one of the body corporate must be incorporated in any country other than India) shall apply and not 2 (1) (f) (iii) (i.e. a company or an association or a body of individuals whose central management and control is exercised in any country other than India). Since both the companies in this case were incorporated in India, the arbitration agreement between the parties will not be an international commercial arbitration and, therefore, the SC declined to nominate an arbitrator.