

IN THE NEWS

July 2008

1.0 Reserve Bank of India (“RBI”) eased Security Deposit norms on External Commercial Borrowings (“ECB”)

On July 11, 2008 with a view to further liberalize the policy on ECB, RBI vide its circular No. 01 A.P. (DIR Series) has allowed creation of charge on immovable assets, financial securities and issues of corporate or personal guarantees, on behalf of the borrower in favour of the overseas lender/security trustee, to secure the ECB to be raised by the borrower. Before granting no objection, authorized dealers have to satisfy the following conditions: (i) the underlying ECB is strictly in compliance with the existing ECB guidelines, (ii) there exists a security clause in the Loan Agreement requiring the borrower to create charge on immovable assets/financial securities/furnish corporate or personal guarantee, (iii) the loan agreement has been signed by both the lender and the borrower, and (iv) the borrower has obtained Loan Registration Number (LRN) from the RBI.

However, authorized dealers have to comply with specific conditions in case of: (a) creation of charge on immovable assets, (b) creation of charge over financial securities and, (c) issue of corporate or personal guarantee before granting no objection to the lender or the security trustee. These conditions are described below:

(a) Creation of charge on immovable assets- No objection by authorized dealers can be granted only to a resident ECB borrower. However, the objection granted should not be construed as a permission to acquire immovable asset (property) in India by the overseas lender/security trustee. Further, the period of charge has to be co-terminus with the maturity of the underlying ECB. Also, in the event the borrower fails to repay in accordance with the agreed repayment schedule, the lender can invoke its charge on the secured assets. However, the immovable asset (property) will have to be sold only to a person resident in India and the sale proceeds shall be repatriated to liquidate the outstanding ECB.

(b) Creation of charge over financial securities- No objection by authorized dealers can be granted to the resident ECB borrower for pledge of shares of the borrowing company held by promoters as well as in domestic associate companies of the borrower to secure the ECB subject to certain conditions like (a) The period of such pledge shall be co-terminus with the maturity of the underlying ECB, (b) In case of invocation of pledge, transfer of shares from the borrower to the overseas lender shall be in accordance with the extant FDI policy i.e. as per the sectoral limits stipulated in FDI guidelines and, (c) A certificate from the statutory auditor of the company stating that the ECB proceeds will be utilized for the permitted end-use/s.

(c) Issue of corporate or personal guarantee- No objection by authorized dealers to the resident ECB borrower for issue of corporate or personal guarantee can be granted only after obtaining a board resolution for issue of corporate guarantee from the company issuing such guarantees, specifying names of the officials authorized to execute such guarantees on behalf of the company or in an individual capacity. Further, specific requests from individuals to issue personal guarantee indicating details of the ECB are required to receive a no-objection from

authorized dealers. The period of such corporate or personal guarantee should be co-terminus with the maturity of the underlying ECB.

2.0 FDI limit in insurance sector likely to increase

The Government is considering lifting the sectoral cap in the insurance sector to 49% as compared to the present 26%. The proposed change in the FDI policy would provide financial flexibility to the insurance companies who would be able to attract more capital participation from their foreign partners. Further, the presence of global companies is likely to expand life insurance market in India and will offer wider choice of insurance products and services to the customers. The official notification is still awaited.