

Foreign Exchange Management (Borrowing and Lending) Regulations, 2018

UNION OF INDIA

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Rule

FOREIGN-EXCHANGE-MANAGEMENT-BORROWING-AND-LENDING-REGULATIONS, 2018

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Foreign Exchange Management (Borrowing and Lending) Regulations, 2018Published vide Notification No. G.S.R. 1213(E), dated 17.12.2018Reserve Bank of India(Foreign Exchange Department)(Central Office)No. FEMA 3(R)/2018-RBG.S.R. 1213(E). - In exercise of the powers conferred by clauses (a), (d) and (e) of Sub-Section (3) of Section 6, sub- section (2) of Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999) and in supersession of Notification No. FEMA. 3/2000-RB dated May 3, 2000, as amended from time to time, Notification No. FEMA. 4/2000- RB dated May 3, 2000, as amended from time to time and Regulation 21 of Notification No. FEMA. 120/RB-2004 dated July 7, 2004 as amended from time to time, the Reserve Bank makes the following regulations for borrowing and lending between a person resident in India and a person resident outside India, namely:

1. Short Title and Commencement.

- (i) These Regulations may be called the Foreign Exchange Management (Borrowing and Lending) Regulations, 2018.(ii)They shall come into force from the date of their publication in the Official Gazette.

2. Definitions.

- In these regulations, unless the context otherwise requires -(i)"Act" means the Foreign Exchange Management Act, 1999 (42 of 1999);(ii)"Authorised Dealer (AD)" means a person authorised as an Authorised Dealer under sub-section (1) of section 10 of the Act;(iii)"EEFC Account", "RFC Account"

shall have the same meaning as assigned to them respectively in the Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2015, as amended from time to time;(iv)"External Commercial Borrowings (ECB)" means borrowing by an eligible resident entity from outside India in accordance with framework decided by the Reserve Bank in consultation with the Government of India;(v)"External Commercial Lending (ECL)" means lending by a person resident in India to a borrower outside India in accordance with framework decided by the Reserve Bank in consultation with the Government of India;(vi)"Foreign Exchange" shall have the same meaning assigned to it in the Act;(vii)"Foreign branches/subsidiaries of the Indian banks" means entities established overseas in terms of provisions contained in the Banking Regulation Act, 1949, as amended from time to time;(viii)'Authorised Bank', 'Non-resident Indian (NRI)', 'FCNR (B) Account', 'NRO Account', and 'NRE Account' shall have the same meanings as assigned to them respectively in the Foreign Exchange Management (Deposit) Regulations, 2016, as amended from time to time;(ix)"Housing Finance Institution" and "National Housing Bank" shall have the same meaning as assigned to them in the National Housing Bank Act, 1987, as amended from time to time;(x)"Indian Entity" means a company incorporated in India under the Companies Act, 2013, as amended from time to time, or a Limited Liability Partnership formed and registered in India under the Limited Liability Partnership Act, 2008, as amended from time to time;(xi)"Overseas Citizen of India (OCI)" Cardholder shall have the same meaning as assigned to it under Section 7(A) of the Citizenship Act, 1955, as amended from time to time;(xii)"Real Estate Activity" means any activity involving own or leased property for buying, selling and renting of commercial and residential properties or land and also includes activities either on a fee or contract basis assigning real estate agents for intermediating in buying, selling, letting or managing real estate. However, this would not include development of integrated township, purchase/ long term leasing of industrial land as part of new project/modernisation or expansion of existing units or any activity under 'infrastructure sub-sectors' as given in the Harmonised Master List of Infrastructure sub-sectors approved by the Government of India vide Notification F. No. 13/06/2009-INF, as amended/ updated from time to time;(xiii)"Relative" shall have the same meaning as assigned to it in the Companies Act, 2013, as amended from time to time;(xiv)"Restricted End Uses" shall mean end uses where borrowed funds cannot be deployed and shall include the following:(a)In the business of chit fund or Nidhi Company;(b)Investment in capital market including margin trading and derivatives;(c)Agricultural or plantation activities;(d)Real estate activity or construction of farm houses; and(e)Trading in Transferrable Development Rights (TDR), where TDR shall have the meaning as assigned to it in the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2015.(xv)"Schedule" means the Schedule to these Regulations;(xvi)"Start-up" means an entity which complies with the conditions laid down in Notification No. G.S.R 180(E) dated February 17, 2016, as amended/ updated from time to time, issued by Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India;(xvii)"Trade Credit" refer to the credits extended by the overseas supplier, bank /financial institution for imports into India in accordance with the Trade Credit framework decided by the Reserve Bank in consultation with the Government of India;Explanation. - Depending on the source of finance, such trade credits include both suppliers' credit and buyers' credit. Suppliers' credit relates to the credit for imports into India extended by the overseas supplier, while buyers' credit refers to loans for payment of imports into India arranged by the importer from overseas bank or financial institution. Imports should be as permissible under the extant Foreign Trade Policy of the Director General of Foreign Trade

(DGFT).(xviii)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.

- 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 and no person resident in India shall borrow in rupees from, or lend in rupees to, a person resident outside India:Provided that the Reserve Bank may, for sufficient reasons, permit a person resident in India to borrow or lend in foreign exchange from or to a person resident in or outside India and/or permit a person resident in India to borrow in rupees from, or lend in rupees to, a person resident outside India.Explanation. - Use of Credit Card (a) in India by a person resident outside India or (b) outside India by a person resident in India shall not be deemed as borrowing or lending in Indian Rupee/foreign exchange.

4. Borrowing from outside India in Foreign Exchange by a Person Resident in India.

- A. Borrowing by an Authorised Dealer or its branch outside India(i)An AD may borrow from its Head Office or branch or correspondent outside India or any other entity up to limit specified and subject to terms and conditions as specified by the Reserve Bank from time to time, in consultation with Government of India.(ii)A branch outside India of an AD being a bank incorporated or constituted in India, may borrow in foreign exchange in the normal course of its banking business from 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.(iii)An AD may borrow in foreign exchange from a bank or a financial institution outside India, for the purpose of granting pre-shipment or post-shipment credit in foreign exchange to its exporter constituent, subject to compliance with the guidelines issued by the Reserve Bank in this regard.(iv)An AD may raise ECB from outside India in accordance with the provisions contained in Schedule I.B.

Borrowing by Persons other than Authorised Dealers(i)Eligible resident entities may raise ECB from outside India in accordance with the provisions contained in Schedule I.(ii)Trade Credit may be raised from outside India by importers for import of capital or non-capital goods as permissible under the extant Foreign Trade Policy of the DGFT in accordance with the provisions contained in Schedule II.(iii)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, where export of goods or services is proposed to be made on deferred payment terms or in execution of a turnkey project or a civil construction contract, provided the terms and conditions stipulated by the authority which has granted the approval to the arrangement are in accordance with the Foreign Exchange Management (Export of goods and services) Regulations, 2015, notified vide Notification No.

FEMA.23(R)/2015-RB dated January 12, 2016, as amended from time to time.(iv)Financial Institutions, set up under an Act of the Indian Parliament, may raise foreign exchange borrowings with the prior approval of the Government of India for the purpose of onward lending.Explanation. - Such borrowings, which are in the nature of ECB, shall be subject to provisions contained in Schedule I.(v)An individual resident in India may borrow a sum not exceeding USD 250,000/- or its

equivalent, or any other amount as decided by the Reserve Bank from time to time, from his/her relatives outside India and subject to such terms and conditions as specified by the Reserve Bank from time to time in consultation with the Government of India.(vi)An individual resident in India studying abroad may raise loan outside India not exceeding USD 250,000/- or its equivalent, or any other amount as decided by the Reserve Bank from time to time, for the purposes of payment of education fees abroad and maintenance subject to terms and conditions as specified by the Reserve Bank from time to time in consultation with the Government of India.

5. Lending in Foreign Exchange by a Person Resident in India.

- A. Lending by an Authorised Dealer in India or its branch outside India. i. An AD in India or its branch outside India may extend foreign currency denominated ECL to a borrower outside India in accordance with the provisions contained in Schedule III. ii. An AD may grant loans to its 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. Subject to the directions or guidelines issued by the Reserve Bank from time to time, an AD in India may extend foreign exchange loans to another AD in India. iv. Branches outside India of AD banks may extend foreign exchange loans against the security of funds held in NRE/ FCNR deposit accounts or any other account as specified by the Reserve Bank from time to time, maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016, notified vide Notification No. FEMA 5(R)/2016-RB dated April 1, 2016, as amended from time to time. B. Lending by persons other than Authorised Dealer. - Eligible resident entity may extend foreign currency denominated ECL to a borrower outside India in accordance with the provisions contained in Schedule III.

6. Borrowing in Indian Rupees by a Person Resident in India.

- A. Borrowing by an Authorised Dealer An AD may raise Rupee denominated ECB from outside India in accordance with the provisions contained in Schedule I. B. Borrowing by persons other than Authorised Dealer. - i. Eligible resident entities may raise Rupee denominated ECB from outside India in accordance with the provisions contained in Schedule I. ii. Eligible resident entities, as defined by the Government of India, may borrow from overseas Multilateral Financial Institutions/International Development Financial Institutions, where the source of funds of such institutions is Rupee denominated bonds issued overseas or resources raised domestically, or any other source as approved by the Government of India. iii. Trade Credit may be raised from outside India in Indian Rupees by importers for import of capital or non-capital goods as permissible under the extant Foreign Trade Policy of the DGFT in accordance with the provisions contained in Schedule II. iv. Any foreign investment in the nature of debt arising out of transfer or issue of security, not covered under the above sub-regulations, should be in compliance with Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017, notified vide Notification No. FEMA 20(R)/ 2017-RB dated November 07, 2017, as amended from time to time. v. Any person resident in India accepting any deposit from, or making any deposit with, a person resident outside India, including loans/ overdrafts against security of funds held in such accounts, should be in compliance with Foreign Exchange

Management (Deposit) Regulations, 2016, notified vide Notification No. FEMA 5(R)/2016-RB dated April 1, 2016, as amended from time to time.vi. A person resident in India, not being a company incorporated in India, may borrow in Indian Rupees from a NRI/Relatives who are OCI Cardholders outside India, subject to such terms and conditions as specified by the Reserve Bank from time to time in consultation with the Government of India. The borrower should ensure that the borrowed funds are not used for restricted end uses.vii. Financial Institutions, set up under an Act of the Indian Parliament, may raise Rupee denominated borrowings from outside India with the prior approval of the Government of India for the purpose of onward lending.Explanation. - Such borrowings which are in the nature of ECBs shall be subject to provisions contained in Schedule I.

7. Lending in Indian Rupees by a Person Resident in India.

- A. Lending by an Authorised Dealer(i)An AD in India may grant loan to a NRI/OCI Cardholder for meeting the borrower's personal requirements/own business purposes/acquisition of a residential accommodation in India/ acquisition of motor vehicle in India / or for any purpose as per the loan policy laid down by the Board of Directors of the AD and in compliance with prudential guidelines of Reserve Bank of India. The AD bank should ensure that the borrowed funds are not used for restricted end uses.(ii)Overdraft in rupee account maintained with AD in India by a bank outside India: An AD may permit a temporary overdraft, for value not exceeding Rupees 5 billion or any other amount as prescribed by the Reserve Bank from time to time, in rupee accounts maintained with it by its overseas branch or correspondent or Head Office outside India, subject to such terms and conditions as the Reserve Bank may direct from time to time.B. Lending by persons other than Authorised Dealer. - (i) A registered non-banking financial company in India or a registered housing finance institution in India or any other financial institution as may be specified by the Reserve Bank from time to time, may provide housing loan or vehicle loan, as the case may be, to a NRI/OCI Cardholder subject to such terms and conditions as prescribed by the Reserve Bank from time to time. The borrower should ensure that the borrowed funds are not used for restricted end uses.(ii)An Indian entity may grant loan in Indian Rupees to its employee who is a NRI/OCI Cardholder in accordance with the Staff Welfare Scheme subject to such terms and conditions as prescribed by the Reserve Bank from time to time. The borrower should ensure that the borrowed funds are not used for restricted end uses.(iii)A resident individual may grant Rupee loan to a NRI/OCI Cardholder relative within the overall limit under the Liberalised Remittance Scheme subject to such terms and conditions as prescribed by the Reserve Bank from time to time. The borrower should ensure that the borrowed funds are not used for restricted end uses.

7A. [Borrowing and lending by persons resident outside India. [Added by Notification No. G.S.R. 163(E), dated 26.2.2019 (w.e.f. 17.12.2018).]

- A person resident outside India may undertake repo or reverse repo transactions in Rupees to borrow or lend money, subject to such terms and conditions as may be specified by the Reserve Bank.Explanation. - Repo shall have the same meaning as defined in Section 45U (c) of RBI Act, 1934 Reverse Repo shall have the same meaning as defined in Section 45U (d) of RBI Act, 1934]

8. Continuation of loan in the event of change in the residential status of the lender/borrower.

- (i) An authorised dealer/authorised bank, may allow continuance of loans granted to a resident individual who subsequently becomes a person resident outside India, subject to such terms and conditions as specified by the Reserve Bank from time to time.(ii)In case a loan was granted by a resident individual to another resident individual and the lender subsequently becomes a non-resident, the repayment of the loan by the resident borrower should be made by credit to the NRO account or any other account of the lender maintained with a bank in India as specified by the Reserve Bank from time to time, at the option of the lender.(iii)In case a loan was granted by a NRI/OCI Cardholder to a person resident in India in accordance with the provisions contained in these regulations and the lender subsequently becomes a resident, the repayment of the loan may be made to the designated account of the lender maintained with a bank in India as specified by the Reserve Bank from time to time, at the option of the lender.(iv)A resident individual will be permitted to service loans taken overseas earlier as a person resident outside India subject to terms and conditions and limit as specified by the Reserve Bank from time to time.

9. Any borrowing under erstwhile regulations can be continued as permitted up to the due date of repayment.

I

[See Regulations 4(A)(iv), 4(B)(i), 4(B)(iv), 6(A), 6(B)(i), 6(B)(vii)]Borrowings from outside India by a person resident in IndiaEligible entities may raise External Commercial Borrowings (ECB) from outside India in accordance with the provisions contained in this Schedule.

1. Currency of borrowing. - ECB can be raised in any freely convertible foreign currency as well as in Indian Rupees or any other currency as specified by the Reserve Bank in consultation with the Government of India.

2. Forms. - ECB can be raised in the forms as prescribed by the Reserve Bank in consultation with the Government of India. Certain hybrid instruments, such as optionally convertible debentures, presently covered under ECB, would be governed by specific hybrid instruments' Regulations when notified by the Government of India.

3. Eligibility of borrowers. - All entities eligible to receive foreign direct investment, in terms of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017, notified vide Notification No. FEMA 20(R)/ 2017-RB dated November 07, 2017, as amended

from time to time, including Start-ups. Further, Reserve Bank, in consultation with the Government of India may specify any other entity/sector eligible to raise ECBs or amend the existing eligibility norms.

4. Maturity. - Minimum average maturity will be 3 years. However, Reserve Bank, in consultation with Government of India may prescribe minimum average maturity stipulation for ECBs raised by entities in certain sectors or for certain amount of ECB or for certain end uses or for borrowing from certain recognised lenders.

5. Lenders. - The lender should be resident of FATF or IOSCO compliant country as defined in the ECB policy, including on transfer of ECBs. However, Multilateral and Regional Financial Institutions where India is a member country will also be considered as recognised lenders. Further, Reserve Bank, in consultation with the Government of India may specify any other lender/set of lenders under the schedule or amend the existing provisions.

Explanation. - Foreign branches / subsidiaries of Indian banks are permitted as recognised lenders only for ECBs raised in foreign exchange.

6. All-in-cost. - i. For ECBs raised in foreign exchange, the maximum spread over the benchmark of 6-month LIBOR or applicable benchmark for the respective currency will be 450 basis points per annum or as prescribed by the Reserve Bank in consultation with the Government of India.

ii. For ECBs raised in Indian Rupees, the maximum spread will be 450 basis points per annum over the prevailing yield of the Government of India securities of corresponding maturity or as prescribed by the Reserve Bank in consultation with the Government of India.

7. End-uses. - The proceeds of borrowing raised from outside India in terms of this Schedule can be used for all purposes except for those activities prescribed in the negative end-use list by the Reserve Bank in consultation with the Government of India.

8. Individual Limits of borrowing. - All eligible borrowers/category of borrowers may raise ECB of up to USD 750 million or equivalent per financial year. For Startups the amount would be limited to USD 3 million or equivalent per financial year. However, Reserve Bank, in consultation with Government

of India may prescribe higher limits for ECBs raised by entities in certain sectors or for certain end uses. The said individual limits may be subject to review by the Reserve Bank in consultation with the Government of India.

9. Security. - The borrower covered in this Schedule may provide security to the lender / suppliers, as specified by the Reserve Bank from time to time in terms of these regulations or under any other Regulations framed under the Act. The borrower may also provide corporate and / or personal guarantee as security for the borrowing, subject to terms and conditions as specified by the Reserve Bank from time to time. However, banks, financial institutions and Non-Banking Finance Companies shall not provide (issue) any type of guarantee in favour of overseas lender on behalf of their constituents for their borrowings under this Schedule, except in accordance with specific stipulations made by the Reserve Bank.

10. Parking of loan amount abroad. - The proceeds of borrowings under this Schedule may, pending utilisation for permissible end-uses, be parked abroad or in India as per the directions issued by the Reserve Bank from time to time.

11. Drawal of Loan. - Draw-downs of borrowing under this Schedule shall be made only after obtaining the loan registration number from the Reserve Bank or from the ADs, as per the system put in place by the Reserve Bank. For non-adherence, the borrower may be required to pay penalty as specified by the Reserve Bank from time to time.

Provided that non-payment of penalty as above shall be treated as a contravention and shall be subject to compounding or adjudication as provided in the Act or Rules framed thereunder.

12. Reporting. - The borrower shall adhere to the reporting procedure as specified by the Reserve Bank from time to time. For nonadherence, the borrower may be required to pay penalty as specified by the Reserve Bank from time to time.

Provided that non-payment of penalty as above shall be treated as a contravention and shall be subject to compounding or adjudication as provided in the Act or Rules framed thereunder.

13. Debt Servicing. - The designated AD shall have the general permission to make remittances of principal, interest and other charges in conformity with the guidelines on borrowing under this Schedule.

14. Hedging. - Reserve Bank, in consultation with the Government of India, may stipulate hedging requirements for borrowings under this schedule.

15. Available routes for raising ECB. - All ECBs can be raised under the automatic route if it conforms to the parameters prescribed under this Schedule and subject to specified reporting conditions. All other cases will be considered by RBI under the approval route.

II

[See Regulations 4(B)(ii) & 6(B)(iii)] Trade Credit for Imports Importers may raise trade credits from outside India in accordance with the provisions contained in this Schedule.

1. Purpose. - Trade Credits can be raised for the purpose of import of non-capital and capital goods as permitted under the extant Foreign Trade Policy of the DGFT and for purchase of non-capital and capital goods within a Special Economic Zone (SEZ) or from a different SEZ subject to terms and conditions as stipulated by the Reserve Bank from time to time.

Explanation. - SEZ is as defined in the SEZ Act, 2005.

2. Currency of borrowing. - Trade credits can be raised in any freely convertible foreign currency as well as in Indian Rupees or any other currency as specified by the Reserve Bank in consultation with the Government of India.

3. Amount of borrowing. - Importers can raise trade credit up to 50 million equivalent per import transaction for import of capital or non-capital goods or any other amount as decided by the Reserve Bank in consultation with the Government of India.

4. Period. - The period of trade credit reckoned from the date of shipment shall be as under:

i. For import of non-capital goods - Maximum period of up to one year and linked with the operating cycle, or for a period as per the guidelines issued by the Reserve Bank from time to time for any import of any goods / for import by any specific sector.ii. For import of capital goods - Maximum period of three years or for a period as per the guidelines issued by the Reserve Bank from time to time.

5. Recognised Lenders. - Overseas suppliers, banks and other financial institutions, foreign equity holders and financial institutions in International Financial Services Centres (IFSCs) in India or any other entities as decided by the Reserve Bank in consultation with the Government of India.

6. Cost. - i. For trade credits in foreign exchange, the maximum spread over the benchmark of 6-month LIBOR or applicable benchmark for the respective currency will be 250 basis points per annum or as prescribed by the Reserve Bank in consultation with the Government of India.

ii. For Rupee denominated trade credit, the all-in-cost shall be commensurate with prevailing market conditions or as prescribed by the Reserve Bank in consultation with the Government of India.

7. Security and guarantee. - The borrower covered in this Schedule may provide security to the lender / suppliers, as specified by the Reserve Bank from time to time in terms of these regulations or under any other Regulations framed under the Act. The borrower may also provide corporate and / or personal guarantee as security for the borrowing subject to terms and conditions as specified by the Reserve Bank from time to time. Further, AD Category I banks are permitted to issue bank guarantees in favour of overseas supplier, bank or financial institution duly ensuring the underlying import /trade credit complies with extant norms.

8. Reporting requirements. - The reporting requirement and procedure will be as specified by the Reserve Bank from time to time.

III

[See Regulations 5(A)(i), 5(B)]Lending to borrowers outside India by a person resident in IndiaEligible entities may extend External Commercial Lending (ECL) to borrowers outside India in accordance with the provisions contained in this Schedule.

- 1. An AD in India may extend External Commercial Lending (ECL) in foreign exchange to a foreign entity in which an Indian entity has made overseas direct investment in accordance with Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004, as amended from time to time.**
- 2. Foreign branches of the Indian banks may extend foreign exchange loans in the normal course of their banking business outside India.**
- 3. An eligible entity, as defined under Foreign Exchange (Transfer or Issue of any Foreign Security) Regulations, 2004, notified vide Notification No.FEMA.120/RB-2004 dated July 7, 2004, as amended from time to time, may lend in foreign exchange to a foreign entity in which it has made direct investment in accordance with the provisions under the said regulations.**
- 4. A person resident in India may lend in foreign exchange out of funds held in his/her EEFC account, for trade related purposes to his/her overseas importer customer subject to such terms and conditions as stipulated by the Reserve Bank of India from time to time in consultation with Government of India.**
- 5. Indian companies may grant loans in foreign exchange to the employees of their branches outside India for personal purposes provided that the loan shall be granted for personal purposes in accordance with the lender's Staff Welfare Scheme / Loan Rules and other terms and conditions as applicable to its staff resident in India and abroad.**