



Repayment/Refinancing of Rupee Loans using Foreign Currency Borrowings or Long Term Export Advances

RBI Alert

April 7, 2015

Dear Reader,

1. By way of a circular dated April 6, 2015 (“Circular”), the Reserve Bank of India (“RBI”) has provided clarifications regarding utilisation of foreign currency borrowings/ long term export advances for repayment of rupee loans.
2. The RBI has observed that long term export advances were primarily intended to be used for execution of long term supply contracts for export of goods. However, it noted that such export advances are in fact being utilised for refinancing of rupee loans. Utilisation of foreign currency borrowings for repayment of rupee loans is restricted under the external commercial borrowings route. While not completely restricting repayment/refinancing of rupee loans with foreign currency borrowings/export advances, the Circular states that where such repayment or refinancing is permitted, it will be subject to certain conditions as explained below.
3. Foreign currency borrowings or export advances obtained from banks outside the Indian banking system without any support from the Indian banking system

If such foreign currency borrowings or export advances are obtained from lenders who are not part of the Indian banking system without any support from the Indian banking system (such as in the form of guarantees/standby letters of credit/letters of comfort), then such foreign currency borrowings or export advances may be utilised to refinance/repay loans availed from the Indian banking system.

4. The Indian banking system has been stated to include all banks in India and the overseas branches, subsidiaries, or joint ventures of Indian banks.
5. Foreign currency borrowings or export advances obtained from banks within the Indian banking system or with support from such banks

If foreign currency borrowings or export advances are obtained:

- (a) from lenders who are part of the Indian banking system (where permitted); or
- (b) with support (where permitted) from the Indian banking system in the form of guarantees/standby letters of credit/letters of comfort;

and such borrowings or advances are utilised for repayment or refinancing of rupee loans, then in addition

to any applicable guidelines, such refinancing will be treated as 'restructuring', if the foreign currency borrowings or export advances are extended to a borrower who is under 'financial difficulty' and involve concessions that the banks would otherwise not consider. Such 'restructuring' is required to be classified and provided for as per extant prudential norms on income recognition, asset classification and provisioning.

6. The Circular lists out possible signs of financial difficulty. However, the list is indicative and non-exhaustive.

7. Rupee loans or foreign currency loans or support from the Indian banking system

The Circular also states that the outstanding foreign currency borrowings can be repaid or refinanced by way of:

(a) rupee loans; or

(b) another foreign currency loan; or

(c) with support from lenders who are part of Indian banking system.

Such repayment and refinancing would also be governed by the prudential norms mentioned and outlined in point 5 above.

8. By issuing the Circular, the RBI has provided some clarity on the utilisation of long term export advances allowed to be taken pursuant to the RBI's circular dated May 21, 2014. It is important to note that the application of the Circular may also extend to external commercial borrowings.

9. A copy of the Circular is attached herewith for your reference.

For any further clarifications or queries, please contact: babusivaprakasam@elp-in.com or deeptoy@elp-in.com

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April 6, 2015

All Scheduled Commercial Banks
(Excluding Regional Rural Banks)

Dear Sir,

Prudential Norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances – Refinancing of Exposures to Borrowers

In terms of circular DBOD.No.BP.BC.107/21.04.048/2013-14 dated April 22, 2014 and A.P. (DIR Series) Circular No.129 dated May 9, 2014, Indian companies are not permitted to raise external commercial borrowings (ECB) from overseas branches / subsidiaries of Indian banks for the purpose of refinance / repayment of the rupee loans raised from the domestic banking system.

2. Further, in terms of the circular dated April 22, 2014, it was advised that utilisation of export advances, received on the strength of guarantees issued by Indian banks, for repayment of loans availed of from Indian banks (except in cases where banks have received approvals under the Foreign Exchange Management Act 1999) is not in compliance with our instructions. In this connection, in terms of instructions contained in A.P. (DIR Series) Circular No.132 dated May 21, 2014 on 'Export of Goods - Long Term Export Advances', eligible exporters were allowed to receive long term export advance to be utilized for execution of long term supply contracts for export of goods. Such exporters were also allowed to use such export advances to liquidate rupee loans which are not classified as non-performing assets as per the Reserve Bank of India asset classification norms, subject to certain conditions.

3. In this connection, it is reiterated that export performance guarantees, where permitted to be issued, shall strictly be in the nature of performance guarantee *and shall not contain any clauses which may in effect allow such performance guarantees to be utilised as financial guarantees/Standby Letters of Credits.*

4. It has been observed that the facility of long term export advances is primarily being utilised for refinancing rupee loans of borrowers instead of being used for execution of long term supply contracts for export of goods. In order to ensure that long term export advances are used for the intended purpose, it is advised that while eligible Indian companies may continue to avail of the facilities available to them under the guidelines mentioned in the above paragraphs, *any repayment/refinancing of rupee loans with foreign currency borrowings/export advances, where permitted, will be subject to the following conditions:*

- a) If the foreign currency borrowings/export advances, where permitted under the guidelines issued under the Foreign Exchange Management Act, 1999 (42 of 1999), are obtained from lenders who are not part of the Indian banking system (Indian banking system would include all banks in India and overseas branch/subsidiary/joint venture of Indian banks) without any support from the Indian banking system in the form of Guarantees/Standby Letters of Credit/Letters of Comfort etc., the same may be utilised to refinance/repay loans availed from the Indian banking system.
- b) If the foreign currency borrowings/export advances are obtained:
 - (i) from lenders who are part of Indian banking system (where permitted); or
 - (ii) with support (where permitted) from the Indian banking system in the form of Guarantees/Standby Letters of Credit/Letters of Comfort, etc.;

then, in addition to any applicable guidelines issued under the Foreign Exchange Management Act, 1999 (42 of 1999), the refinance shall be treated as 'restructuring' (and classified/provided for as per extant prudential norms on income recognition, asset classification and provisioning), if the above borrowings/export advances are extended to a borrower who is under financial difficulty and involve concessions that the bank would otherwise not consider. A non-exhaustive and indicative list of signs of financial difficulty is annexed.

5. It is further advised that repayment/refinancing of foreign currency borrowings outstanding with a bank, by way of rupee loans or another foreign currency loan (where permitted) or based on support (where permitted) in the form of Guarantees/Standby Letters of Credit/Letters of Comfort, etc. from lenders who are part of Indian banking system would also be governed by the prudential guidelines stipulated at 4(b) above.

Yours faithfully,

(Sudarshan Sen)
Chief General Manager-in-Charge

Non-Exhaustive Indicative List of Signs of Financial Difficulty

- Continuous irregularities in cash credit/overdraft accounts such as inability to maintain stipulated margin on continuous basis or drawings frequently exceeding sanctioned limits, periodical interest debited remaining unrealised;
- Repeated undue delay in making timely payment of instalments of principal and interest on term loans;
- Undue delay in meeting commitments towards payments of installments due, crystallized liabilities under LC/BGs, etc.
- Continuing inability to adhere to financial loan covenants;
- Failure to pay statutory liabilities, non- payment of bills to suppliers of raw materials, water, power, etc.;
- Non-submission or undue delay in submission or submission of incorrect stock statements and other control statements, delay in publication of financial statements and excessively qualified financial statements;
- Delay in project implementation;
- Downward migration of internal/external ratings/rating outlook.
