

FOREIGN EXCHANGE MANAGEMENT (GUARANTEES) REGULATIONS, 2000

FEMA 8/2000-RB, dated 3-5-2000 [GSR 391(E), dated 3-5-2000] - In exercise of the powers conferred by clause (j) of sub-section (3) of section 6, sub-section (2) of section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank makes the following regulations, namely:—

Short title and commencement.

1. (i) These regulations may be called the Foreign Exchange Management (Guarantees) Regulations, 2000.

(ii) They shall come into force on 1st day of June, 2000.

Definitions.

2. In these regulations, unless the context requires otherwise,—

(i) ‘Act’ means the Foreign Exchange Management Act, 1999 (42 of 1999);

(ii) ‘authorised dealer’ means a person authorised as an authorised dealer under sub-section (1) of section 10 of the Act;

(iii) the words and expressions used but not defined in these regulations shall have the same meanings respectively assigned to them in the Act;

¹[(iv) Irrevocable Payment Commitment (IPC)' means irrevocable confirmation issued by the custodian bank in favour of a stock exchange/clearing corporation of a stock exchange on behalf of its customers, to meet the payment obligation arising out of a ‘buy’ transaction.]

Prohibition.

3. Save as otherwise provided in these regulations, or with the general or special permission of the Reserve Bank, no person resident in India shall give a guarantee or surety in respect of, or undertake a transaction, by whatever name called, which has the effect of guaranteeing, a debt, obligation or other liability owed by a person resident in India to, or incurred by, a person resident outside India.

²[**Restriction on obtaining overseas guarantee.**

3A. No corporate registered under the Companies Act, 1956 (1 of 1956) shall avail domestic rupee denominated structured obligations by obtaining credit enhancement in the form of guarantee by international banks, international financial institutions or joint venture partners, except with the prior approval of the Reserve Bank :

Provided howsoever that, ¹[*a person resident in India who is eligible to raise foreign currency loan under sub-regulation (1) of Regulation 6 of Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 read with Schedule I thereto,*] may obtain, without the prior approval of the Reserve Bank, credit enhancement in the form of guarantee from a person resident outside India for the domestic debts raised by such companies through issue of capital market instrument like bonds and debentures subject to satisfying the terms and conditions as may be stipulated by the Reserve Bank, from time to time, in this regard.]

Guarantees which may be given by an authorised dealer.

4. (1) An authorised dealer may give a guarantee in respect of any debt, obligation or other liability incurred by a person resident in India and owed to a person resident outside India, in the following cases, namely :—

where the debt, obligation or other liability is incurred by the person resident in India,—

(i) as an exporter, on account of exports from India;

(ii) as an importer, in respect of import on deferred payment terms in accordance with the approval granted by the Reserve Bank for import on such terms.

²[(1A) An Authorised Dealer may give guarantee, Letter of Undertaking or Letter of Comfort in respect of any debt, obligation or other liability incurred by a person resident in India and owed to a person resident outside India (being an overseas supplier of goods, bank or a financial institution), for import of goods, as permitted under the Foreign Trade Policy announced by the Government of India from time to time and subject to such terms and conditions as may be specified by Reserve Bank from time to time.]

³[(1B) An authorised dealer in India may give guarantee or standby Letter of Credit in respect of an obligation incurred by a person resident in India and owed to a person resident outside India in connection with payment of margin money in respect of approved commodity hedging transaction of such person residing in India subject to

such terms and conditions as may be stipulated by the Reserve Bank from time to time.]

(2) An authorised dealer may give a guarantee in respect of any debt, obligation or other liability incurred by a person resident outside India, in the following cases, namely :—

(i) where such debt, obligation or liability is owed to a person resident in India in connection with a *bona fide* trade transaction :

Provided that the guarantee given under this clause is covered by a counter-guarantee of a bank of international repute resident abroad;

(ii) as a counter-guarantee to cover guarantee issued by his branch or correspondent outside India, on behalf of Indian exporter in cases where guarantees of only resident banks are acceptable to overseas buyers.

⁴[(iii) (a) *An authorised dealer in India may give guarantee on behalf of a person resident outside India acquiring shares or convertible debentures of an Indian company through open offers/delisting/exit offers, provided—*

(i) *the transaction is in compliance with the provisions of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) [SEBI (SAST)] Regulations;*

(ii) *the guarantee is covered by a counter guarantee of a bank of international repute; and*

(b) *the guarantee shall be valid for a tenure co-terminus with the offer period as required under the SEBI (SAST) Regulations.]*

(3) An authorised dealer may, in the ordinary course of his business, give a guarantee in the following other cases, namely:

(i) on behalf of his customer or branch or correspondent outside India in respect of missing or defective documents, or authenticity of signatures;

(ii) in favour of organizations outside India issuing travellers cheques stocked for sale in India by the authorised dealer or by his constituents who are authorised persons;

¹[(iii) in favour of foreign airlines/International Air Transport Association (IATA), on behalf of IATA approved travel agents;]

²[(iv) in favour of a non-resident service provider, on behalf of a resident customer who is a service importer, subject to such terms and conditions as stipulated by the Reserve Bank from time to time:

Provided that no guarantee for an amount exceeding USD 500,000 or its equivalent shall be issued on behalf of a service importer other than a Public Sector Company or a Department/ Undertaking of the Government of India/State Government:

Provided further that where the service importer is a Public Sector Company or a Department/ Undertaking of the Government of India/State Government, no guarantee for an amount exceeding USD 100,000 or its equivalent shall be issued without the prior approval of the Ministry of Finance, Government of India.

Explanation : For the purpose of this regulation, "Public Sector Company "means a Government company as defined in section 617 of the Companies Act, 1956.]

³[(4) An authorised dealer (custodian bank), subject to the directions issued by the Reserve Bank, from time to time, may issue Irrevocable Payment Commitments (IPCs) in favour of the Stock Exchanges/Clearing Corporations of the Stock Exchanges, on behalf of their registered FII clients for purchase of shares and convertible debentures under the Portfolio Investment Scheme (PIS) notified vide Schedule 2 to Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 (Notification No. FEMA 20/2000-RB) dated May 3, 2000, as amended from time to time.

Explanation: (i) If the IPC, which is in the nature of a financial guarantee, is issued prior to receipt of the required funds from the customer, it will be reckoned for the computation of Capital Market Exposure of the custodian bank.

(ii) Issue of IPCs should be in accordance with the Reserve Bank regulations on banks' exposure to the capital market issued by the Reserve Bank from time to time and also comply with the instructions issued by Department of Banking Operations and Development, Reserve Bank of India (DBOD), from time to time.]

Guarantees which may be given by persons other than an authorised dealer.

5. A person other than an authorised dealer may give a guarantee in the following cases, namely :

(a) ¹[(i)] a person resident in India being an exporting company may give a guarantee for performance of a project outside India, or for availing of credit facilities, whether fund-based or non-fund based, from a bank or a financial institution outside India in connection with the execution of such project:

Provided that the previous approval for undertaking the project has been duly obtained from the approving authority in India;

¹[(ii)] a person resident in India being an exporter company may give guarantee in lieu of Bid Bond Guarantee, for bidding for a contract outside India without the approval of the Approving Authority provided that the amount of such guarantee shall not exceed 5% of the contract value.]

Explanation.-For the purpose of this regulation, the "approving authority" means the authority referred to in Regulation 18 of Foreign Exchange Management (Export of Goods and Services) Regulations, 2000;

²[(b) (i) *An Indian Party promoting or setting up outside India, a Joint Venture (JV) or a Wholly Owned Subsidiary (WOS), may give a guarantee to or on behalf of the latter in connection with its business:*

Provided that the terms and conditions stipulated in Foreign Exchange Management (Transfer and Issue of Foreign Security) (Amendment) Regulations, 2004 for promoting or setting up such company or subsidiary are continued to be complied with :

Provided further that the guarantee under this clause may also be given by an authorized dealer in India;

(ii) *An Indian Party promoting or setting up outside India, a Joint Venture (JV) or a Wholly Owned Subsidiary (WOS), may give a guarantee to or on behalf of the first generation step down operating company in connection with its business:*

Provided that the terms and conditions stipulated in Foreign Exchange Management (Transfer and Issue of Foreign Security) (Amendment) Regulations, 2004 for promoting or setting up such company or subsidiary are continued to be complied with.

Explanation: *Indian Party' shall have the same meaning as assigned to it in Foreign Exchange Management (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2004.]*

(c) an agent in India of a shipping or airline company incorporated outside India may give a guarantee on behalf of such company in connection with its obligation or liability owed to any statutory or Government authority in India;

¹[(d) a bank which is an authorised dealer may, subject to the directions issued by the Reserve Bank in this behalf, permit a person resident in India or on behalf of such person to issue guarantee in favour of an overseas lender or security trustee to secure an external commercial borrowing availed under the provisions of the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 (Notification No. FEMA 3/2000-RB, dated 3-5-2000);]

²[(e) a bank which is an authorised dealer may, subject to the directions issued by the Reserve Bank in this behalf, permit a person resident in India to issue corporate guarantee in favour of an overseas lessor for financing import through operating lease effected in conformity with the Foreign Trade Policy in force and under the provisions of the Foreign Exchange Management (Current Account Transactions) Rules, 2000 framed by Government of India vide Notification No. G.S.R. 381 (E), dated May 3,2000 and the Directions issued by Reserve Bank under Foreign Exchange Management Act, 1999 from time to time.]

1. Inserted by the FEM (Guarantees) (Amendment) Regulations, 2012, w.r.e.f. 29-4-2011.

2. Inserted by the FEM (Guarantees) (Third Amendment) Regulations, 2012, w.r.e.f. 26-9-2011.

1. Substituted for "a company resident in India engaged exclusively in development of infrastructure (infrastructure defined by the Reserve Bank from time to time in this regard) and infrastructure financial companies, as categorized by Reserve Bank from time to time," by the FEM (Guarantees) (Third Amendment) Regulations, 2013, w.e.f. **23-5-2013**.

2. Inserted by the FEM (Guarantees) (Amendment) Regulations, 2005, w.r.e.f. 1-11-2004.

3. Inserted by the FEM (Guarantees) (Second Amendment) Regulations, 2009, w.r.e.f. 10-11-2008.

4. Inserted by the FEM (Guarantees) (Second Amendment) Regulations, 2013, w.e.i. **5-3-2013**.

1. Inserted by the FEM (Guarantees) (Amendment) Regulations, 2004, w.e.f. 16-10-2004.

2. Substituted by the FEM (Guarantees) (Amendment) Regulations, 2013, w.r.e.f. **5-10-2009**. Prior to its substitution, clause (*iv*), as inserted by the FEM (Guarantees) (Amendment) Regulations, 2007, w.r.e.f. 17-11-2006, read as under :

"(*iv*) in favour of a non-resident service provider, on behalf of a resident customer who is a service importer, for an amount up to USD 100,000 or its equivalent."

3. Inserted by the FEM (Guarantees) (Amendment) Regulations, 2012, w.r.e.f. 29-4-2011.

1. Inserted by the FEM (Guarantees) (Amendment) Regulations, 2002, w.e.f. 18-3-2002.

2. Substituted by the FEM (Guarantees) (Fourth Amendment) Regulations, 2013 w.r.e.f. **27-5-2011**. Prior to its substitution, clause (*b*) read as under :

"(*b*) a company in India promoting or setting up outside India, a joint venture company or a wholly-owned subsidiary, may give a guarantee to or on behalf of the latter in connection with its business:

Provided that the terms and conditions stipulated in Foreign Exchange Management (Transfer and Issue of Foreign Security) Regulations, 2000 for promoting or setting up such company or subsidiary are continued to be complied with :

Provided further that the guarantee under this clause may also be given by an authorised dealer in India:"

1. Inserted by the FEM (Guarantees) (Amdt.) Regulations, 2009, w.r.e.f. 11-7-2008.



2. Inserted by the FEM (Guarantees) (Amdt.) Regulations, 2010, w.r.e.f. 20-4-2009.