

External Commercial Borrowings (ECB) and Trade Credits (TC) Policy – Changes due to LIBOR transition

A.P. (DIR Series) Circular No. 19 dated December 08, 2021

In view of imminent discontinuance of LIBOR as benchmark rate it has been decided to make following changes to all-in-cost benchmark and ceiling for FCY ECBs / TCs:

i. Redefining benchmark rate for FCY ECBs/TCs:

The benchmark rate in case of FCY ECB/TC shall now be any widely accepted interbank rate or alternative reference rate (ARR) of 6 month tenor, applicable to the currency of borrowing. LIBOR has now been replaced with any accepted interbank rate.

ii. Change in all-in-cost ceiling for new ECBs/TCs:

To take into account differences in credit risk and term premia between LIBOR and the ARR, the all-in-cost ceiling for new FCY ECBs and TCs has been increased by 50 bps to 500 bps and 300 bps, respectively, over the benchmark rates.

iii. One time adjustment in all-in-cost ceiling for existing ECBs/TCs:

To enable smooth transition of existing ECBs/ TCs linked to LIBOR whose benchmarks are changed to ARR, the all-in cost ceiling for such ECBs/ TCs has been revised upwards by 100 basis points to 550 bps and 350 bps, respectively, over the ARR. AD Category-I banks must ensure that any such revision in ceiling is only on account of transition from LIBOR to alternative benchmarks.

There is no change in the all-in-cost benchmark and ceiling for INR ECBs/ TCs.

Introduction of Legal Entity Identifies for Cross-Border Transactions

A.P. (DIR Series) Circular No. 20 dated December 10, 2021

The Legal Entity Identifies (LEI) is a 20 digit number user to uniquely identify parties to financial transactions worldwide to improve the quality and accuracy of financial data systems. LEI has been introduced by the Reserve Bank in a phased manner for participants in the over the counter (OTC) derivative, non-derivative markets, large corporate borrowers and large value transactions in centralised payment systems.

In order to get the benefits of LEI it has been decided that AD Category I Banks with effect from October 1, 2022 shall obtain LEI from resident entities (non individuals) undertaking capital or current account transactions of Rs. 50 crore and above (per transaction) under FEMA, 1999.

As regards to non-resident counterparts/overseas entities if LEI is not available, AD Bank may process transactions to avoid disruptions. Further AD Category I Banks may encourage concerned entities to voluntarily disclose LEI while undertaking transactions even before October 1, 2022. Once LEI is obtained, it must be reported in all transactions of that entity, irrespective of transaction size.

Entities can obtain LEI from any of the Local Operating Units (LOUs) accredited by the GLEIF, the body tasked to support the implementation and use of LEI. In India, LEI can be obtained from Legal Entity Identifier India Ltd. (LEIL) (<https://www.ccilindia-lei.co.in>), which is also recognised as an issuer of LEI by the Reserve Bank under the Payment and Settlement Systems Act, 2007. The rules, procedures and documentation requirements may be ascertained from LEIL.

1. RBI NOTIFICATION NO. RBI/2021-22/135 A.P. (DIR SERIES) CIRCULAR NO. 19 DATED DECEMBER 08, 2021

External Commercial Borrowings (ECB) and Trade Credits (TC) Policy – Changes due to LIBOR transition

Please refer to paragraph 3 of the Governor's Statement on Developmental and Regulatory Policies dated December 08, 2021. In this connection, attention of Authorised Dealer Category-I (AD Category-I) banks is invited to paragraph 1.5, 2.1.vi. and 14.vi. of the Master Direction No.5 dated March 26, 2019, on "External Commercial Borrowings, Trade Credits and Structured Obligations", prescribing the benchmark rates and the maximum spread over benchmark for calculating the all-in-cost for foreign currency (FCY) ECBs and TCs.

2. In view of the imminent discontinuance of LIBOR as a benchmark rate, it has been decided, in consultation with stakeholders, to make the following changes to the all-in-cost benchmark and ceiling for FCY ECBs/ TCs:

- i. Redefining Benchmark Rate for FCY ECBs and TCs: Currently, the benchmark rate is defined in paragraph 1.5 of the master direction as "benchmark rate in case of FCY ECB/TC refers to 6-months LIBOR rate of different currencies or any other 6-month interbank interest rate applicable to the currency of borrowing, e.g., EURIBOR". Henceforth, benchmark rate in case of FCY ECB/TC shall refer to any widely accepted interbank rate or alternative reference rate (ARR) of 6-month tenor, applicable to the currency of borrowing.
 - ii. Change in all-in-cost ceiling for new ECBs/ TCs: To take into account differences in credit risk and term premia between LIBOR and the ARRs, the all-in-cost ceiling for new FCY ECBs and TCs has been increased by 50 bps to 500 bps and 300 bps, respectively, over the benchmark rates.
 - iii. One Time Adjustment in all-in-cost ceiling for existing ECBs/ TCs: To enable smooth transition of existing ECBs/ TCs linked to LIBOR whose benchmarks are changed to ARRs, the all-in cost ceiling for such ECBs/ TCs has been revised upwards by 100 basis points to 550 bps and 350 bps, respectively, over the ARR. AD Category-I banks must ensure that any such revision in ceiling is only on account of transition from LIBOR to alternative benchmarks.
3. There is no change in the all-in-cost benchmark and ceiling for INR ECBs/ TCs.
 4. All other provisions of the ECB/ TC policy remain unchanged. AD Category-I banks should bring the contents of this circular to the notice of their constituents/ customers.
 5. The Master Direction No. 5 dated March 26, 2019, is being updated to reflect the changes.
 6. The directions contained in this circular have been issued under section 10(4) and 11(2) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions/ approvals, if any, required under any other law.

2. RBI NOTIFICATION NO. RBI/2021-22/136 DOR.CAP.REC.NO.72/21.06.201/2021-22 DATED DECEMBER 08, 2021

General permission for infusion of capital in overseas branches and subsidiaries and retention/ repatriation/ transfer of profits in these centres by banks incorporated in India

Please refer to para 1 of the 'Statement on Developmental and Regulatory Policies' dated December 8, 2021 on the above subject.

2. As per extant practice, banks incorporated in India seek prior RBI approval for

- a. infusion of capital in their overseas branches and subsidiaries.
- b. retention of profits in, and transfer or repatriation of profits from these overseas centres.

3. In order to provide greater operational flexibility, it has been decided that prior RBI approval for above capital infusion/ transfers (including retention/ repatriation of profits), shall not be required by banks which meet the

regulatory capital requirements (including capital buffers¹). Instead, the banks shall seek approval of their boards for the same.

4. While considering such proposals, banks shall analyse all relevant aspects including inter alia the business plans, home and host country regulatory requirements and performance parameters of their overseas centres. Banks shall also ensure compliance with all applicable home and host country laws and regulations.

5. Banks which do not meet the minimum regulatory capital requirements as laid down in para 3 above, shall be required to seek prior approval of RBI as hitherto.

Reporting

6. Banks shall report all such instances of infusion of capital and/ or retention²/transfer/ repatriation of profits in overseas branches and subsidiaries within 30 days of such action, to the Chief General Manager-in-Charge, Department of Regulation, Central Office, Mumbai with a copy to Chief General Manager-in-Charge, Department of Supervision, Central Office, Mumbai.

Applicability

7. This circular is applicable to all Scheduled Commercial Banks other than foreign banks, Small Finance Banks, Payment Banks and Regional Rural Banks.

These instructions come into effect from the date of the circular.

1 Capital Conservation Buffer (CCB), including Domestic – Systemically Important Bank (D-SIB) capital requirements where applicable, and Counter-Cyclical Capital Buffer as may be mandated.

2 In case of retention of profits in overseas branch/ subsidiary, the reporting shall be done within 30 days of the finalisation of the annual financial statements of the overseas branch/ subsidiary.

3. RBI NOTIFICATION NO. RBI/2021-22/137 A.P. (DIR SERIES) CIRCULAR NO. 20 DATED DECEMBER 10, 2021

Introduction of Legal Entity Identifier for Cross-border Transactions

The Legal Entity Identifier (LEI) is a 20-digit number used to uniquely identify parties to financial transactions worldwide to improve the quality and accuracy of financial data systems. LEI has been introduced by the Reserve Bank in a phased manner for participants in the over the counter (OTC) derivative, non-derivative markets, large corporate borrowers and large value transactions in centralised payment systems.

2. In order to further harness the benefits of LEI, it has been decided that AD Category I banks, with effect from October 1, 2022, shall obtain the LEI number from the resident entities (non-individuals) undertaking capital or current account transactions of ₹ 50 crore and above (per transaction) under FEMA, 1999. As regards non-resident counterparts/ overseas entities, in case of non-availability of LEI information, AD Category I banks may process the transactions to avoid disruptions. Further, AD Category I banks may encourage concerned entities to voluntarily furnish LEI while undertaking transactions even before October 1, 2022. Once an entity has obtained an LEI number, it must be reported in all transactions of that entity, irrespective of transaction size.

3. AD Category-I banks shall have the required systems in place to capture the LEI information and ensure that any LEI captured is validated against the global LEI database available on the website of the Global Legal Entity Identifier Foundation (GLEIF).

4. AD banks may bring the contents of this circular to the notice of their constituents concerned and advise entities who undertake large value transactions (₹ 50 crore and above) under FEMA, 1999 to obtain LEI in time, if they do not already have one issued.

5. Entities can obtain LEI from any of the Local Operating Units (LOUs) accredited by the GLEIF, the body tasked to support the implementation and use of LEI. In India, LEI can be obtained from Legal Entity Identifier India Ltd. (LEIL) (<https://www.ccilindia-lei.co.in>), which is also recognised as an issuer of LEI by the Reserve Bank under the

Payment and Settlement Systems Act, 2007. The rules, procedures and documentation requirements may be ascertained from LEIL.

6. The directions contained in this circular are being issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act (FEMA), 1999 (42 of 1999) and are without prejudice to permissions/approvals, if any, required under any other law.

4. RBI NOTIFICATION NO. RBI/2021-22/138 DOR.RET.REC.73/12.01.001/2021-22 DATED DECEMBER 10, 2021

Section 24 of the Banking Regulation Act, 1949 – Maintenance of Statutory Liquidity Ratio (SLR) – Marginal Standing Facility (MSF) - return to the normal dispensation

Please refer to circular DOR.RET.REC.36/12.01.001/2021-22 dated August 09, 2021 and paragraph 15(i) of the Master Direction DOR.No.RET.REC.32/12.01.001/2021-22 dated July 20, 2021, on Marginal Standing Facility (MSF), wherein the banks were allowed to avail of funds under the MSF by dipping into the Statutory Liquidity Ratio (SLR) up to three per cent of their net demand and time liabilities (NDTL) outstanding at the end of the second preceding fortnight. This facility, which was initially available up to June 30, 2020, was later extended up to December 31, 2021 vide circular DOR.RET.REC.36/12.01.001/2021-22 dated August 09, 2021.

2. As announced in the Governor's Statement dated December 08, 2021, it is proposed to return to the normal dispensation. Accordingly, banks will be able to dip into the Statutory Liquidity Ratio (SLR) up to two percent of NDTL instead of three percent for overnight borrowing under the MSF with effect from January 1, 2022.

5. RBI NOTIFICATION NO. RBI/2021-22/139 DOS.CO.PPG.SEC.7/11.01.005/2021-22 DATED DECEMBER 14, 2021

Prompt Corrective Action (PCA) Framework for Non-Banking Financial Companies (NBFCs)

Reserve Bank of India had introduced a Prompt Corrective Action Framework (PCA) for Scheduled Commercial Banks in 2002 and the same has been reviewed from time to time based on the experience gained and developments in the banking system. The objective of the PCA Framework is to enable Supervisory intervention at appropriate time and require the Supervised Entity to initiate and implement remedial measures in a timely manner, so as to restore its financial health. The PCA Framework is also intended to act as a tool for effective market discipline. The PCA Framework does not preclude the Reserve Bank of India from taking any other action as it deems fit at any time in addition to the corrective actions prescribed in the Framework.

2. NBFCs have been growing in size and have substantial interconnectedness with other segments of the financial system. Accordingly, it has now been decided to put in place a PCA Framework for NBFCs to further strengthen the supervisory tools applicable to NBFCs. The PCA Framework for NBFCs, as contained in the enclosed Annex, comes into effect from October 1, 2022, based on the financial position of NBFCs on or after March 31, 2022.

3. In terms of extant regulations, Government NBFCs have been provided time upto March 31, 2022 to adhere to the capital adequacy norms provided for NBFCs (Ref. Annex I of Non-Banking Financial Company - Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016). Accordingly, a separate circular would be issued in due course with regard to applicability of PCA Framework to Government NBFCs.

4. The PCA Framework will be reviewed after three years of being in operation.

6. RBI NOTIFICATION NO. RBI/2021-22/140 CO.DGBA.GBD.NO.S1112/42-01-033/2021-2022 DATED DECEMBER 15, 2021

Government Agency Business Arrangement – Appointment of Scheduled Private Sector Banks as Agency Banks of Reserve Bank of India (RBI)

Please refer to RBI Circular RBI/2021-22/36; CO.DGBA.GBD.No.S77/42.01.033/2021-22 dated May 10, 2021 on the captioned subject.

2. It has now been decided in consultation with the Department of Financial Services, Ministry of Finance, Government of India, to make scheduled payments banks and scheduled small finance banks eligible to conduct Government agency business. Any payment bank or small finance bank that intends to undertake Government agency business may be appointed as an agent of RBI upon execution of an agreement with RBI, provided that the overarching regulatory framework prescribed for these banks is complied with.

3. All the instructions/conditions prescribed in our aforesaid Circular dated May 10, 2021 will henceforth be applicable to the scheduled payments banks and scheduled small finance banks also.