

Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000

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Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000

In exercise of the powers conferred by clause (d) 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 for borrowing or lending in foreign exchange by a person resident in India; namely :

1. Short title and commencement :-

- (i) These regulations may be called the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000.
- (ii) They shall come into force on 1st day of June, 2000.

2. Definitions :-

In these regulations, unless the context otherwise requires,

- (a) 'Act' means the Foreign Exchange Management Act, 1999 (42 of 1999);
- (b) 'authorised dealer' means a person authorised as an authorised dealer under sub-section (1) of Section 10 of the Act;

(c) 'EEFC account', 'RFC account' means the accounts referred to in the Foreign Exchange Management (Foreign currency accounts by a person resident in India) Regulations, 2000;

(d) 'PCNR (B) account', 'NRE account' means the accounts referred to in the Foreign Exchange Management (Deposit) Regulations, 2000;

(e) 'Indian entity' means a company or a body corporate or a firm in India;

(f) 'Joint Venture abroad' means a foreign concern formed, registered or incorporated in a foreign country in accordance with the laws and regulations of that country and in which investment has been made by an Indian entity;

(g) 'Schedule' means the Schedule to these Regulations;

(h) 'Wholly owned subsidiary abroad' means a foreign concern formed, registered or incorporated in a foreign country in accordance with the laws and regulations of that country and whose entire capital is owned by an Indian entity;

(i) 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 in Foreign Exchange :-

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: Provided that the Reserve Bank may, for sufficient reasons, permit a person to borrow or lend in foreign exchange from or to a person resident outside India.

4. Borrowing and Lending in Foreign Exchange by an Authorised dealer :-

(1) An authorised dealer in India or his branch outside India may lend in foreign currency in the circumstances and subject to the conditions mentioned below, namely :

(i) A branch outside India of an authorised dealer being a bank incorporated or constituted in India, may extend foreign currency loans in the normal course of its banking business outside India;

(ii) An authorised dealer may grant loans to his 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) An authorised dealer may extend credit facilities to a wholly owned

subsidiary abroad or a joint venture abroad of an Indian entity: Provided that not less than 51 per cent of equity in such subsidiary or joint venture is held by the Indian entity subject to compliance with the Foreign Exchange Management (Transfer and Issue of Foreign Security) Regulations, 2000;

(iv) An authorised dealer may, in his commercial judgment and in compliance with the prudential norms, grant loans in foreign exchange to his constituent maintaining EEFC Account or RFC Account, against the security of funds held in such account;

(v) A branch outside India of an authorised dealer may extend foreign currency loans against the security of funds held in NRE/FCNR deposit accounts maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2000;

(vi) Subject to the directions or guidelines issued by the Reserve Bank from time to time, an authorised dealer in India may extend foreign currency loans to another authorised dealer in India.

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"(vii) An authorised dealer may grant foreign currency loans in India against the security of funds held in FCNR(B) account to the account holder only, subject to the guidelines issued by the Reserve Bank in this regard."

(2) An authorised dealer in India may borrow in foreign currency in the circumstances and subject to the conditions mentioned below, namely :

(i) An authorised dealer may borrow from his Head Office or branch or correspondent outside India up to ²["twenty-five per cent"] of his unimpaired Tier I capital or US\$ 10 million, whichever is more, subject to such conditions as the Reserve Bank may direct. Explanation. For the purpose of clause (i), the aggregate loans availed of by all branches in India of the authorised dealer from his Head Office, all branches and correspondents outside India, shall be reckoned.

3 (ii) A branch outside India of an authorised dealer being a bank incorporated or constituted in India, may borrow in foreign currency in the normal course of its banking business 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 authorised dealer may borrow in foreign currency from a bank or a financial institution outside India, for the purpose of granting pre-shipment or post-shipment credit in foreign currency to his exporter constituent, subject to compliance with the guidelines issued by the Reserve Bank in this regard.

Inserted by Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) (Second Amendment) Regulations, 2003

In Regulation 4, sub-regulation (2), in clause (i) the words "fifteen per cent" shall be substituted by Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) (Amendment) Regulations, 2002., Noti. No. G.S.R. 476(E), dated April 29, 2002, published in the Gazette of India, Part II, Section 3(i), dated 8th July, 2002, pp. 5-6, No. 306

In Regulation 4, sub-regulation (2), clause (ii) shall be deleted and the subsequent clauses shall be renumbered as (ii) and (iii) respectively.", by the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) (Amendment) Regulations, 2005

5. Borrowing and Lending in Foreign Exchange by persons other than authorised dealer :-

(1) An Indian entity may lend in foreign exchange to its wholly owned subsidiary or joint venture abroad constituted in accordance with the provisions of Foreign Exchange Management (Transfer or Issue of Foreign Security) Regulations, 2000.

(2) 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, for execution outside India of a turnkey project or civil construction contract or in connection with exports on deferred payment terms, provided the terms and conditions stipulated by the authority which has granted the approval to the project or contract or export in accordance with the Foreign Exchange Management (Export of Goods and Services) Regulations, 2000.

(3) An importer in India may, for import of goods into India, avail of foreign currency credit for a period not exceeding six months extended by the overseas supplier of goods, provided the import is in compliance with the Export Import Policy of the Government of India in force.

(4) A person resident in India may lend in foreign currency out of funds held in his EEFC account, for trade related purposes to his overseas importer customer: Provided that,

(a) the aggregate amount of such loans outstanding at any point of time does not exceed US\$ 3 million; and

(b) where the amount of loan exceeds US\$ 25,000, a guarantee of a bank of international repute situated outside India is provided by the overseas borrower in favour of the lender.

(5) Foreign currency loans may be extended by Export Import Bank of India, Industrial Development Bank of India, Industrial Finance Corporation of India, Industrial Credit and Investment Corporation of India Limited, Small Industries Development Bank of India Limited or any other institution in India to their constituents in India out of foreign

currency borrowings raised by them with the approval of the Central Government for the purpose of onward lending.

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"(6) Indian companies in India may grant loans in foreign currency 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."

In Regulation 5, sub-regulation (6) shall be inserted by Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) (Amendment) Regulations, 2003. . ,Gazette of India, Extra., Part II, Section 3(1), dated 9th July, 2003, pp. 1-2, No. 311

6. Other borrowings in foreign exchange under Automatic Route or with prior approval of Reserve Bank of India under the Approval Route or as Trade Credit :-

5.

(1) A person resident in India, other than a branch or office in India owned or controlled by a person resident outside India, may raise in accordance with the provisions of the Automatic Route Scheme specified in Schedule I, foreign currency loans of the nature and for the purposes as specified in that Schedule; provided that this shall be deemed to have come into force with effect from 1.2.2004 except in relation to item 1(iv) (A)(c) of Schedule I which shall be deemed to have come into force with effect from 23.2.2004.

(2) A person resident in India who desires to raise foreign currency loans of the nature or for the purposes as specified in Schedule II and who satisfies the eligibility and other conditions specified in that Schedule, may apply to the Reserve Bank for prior approval to raise such loans; provided that this shall be deemed to have come into force with effect from 1.2.2004 except in relation to item 3(iii)(A)(c) of Schedule II which shall be deemed to have come into force with effect from 23.2.2004.

(3) Trade Credit not exceeding USD 20 million per import transaction shall be raised by borrowings subject to the terms specified in Schedule III hereto; provided that this shall be deemed to have come into force with effect from 17.4.2004.

⁶(4) ⁷[Where prior approval is required], the Reserve Bank may grant its approval subject to such terms and conditions as it may consider necessary:

Provided that while considering the grant of approval, the Reserve Bank shall take into account the overall limit stipulated by it, in consultation with the Central Government, for availment of such loans by the persons

resident in India.

8 (5) The Reserve Bank may grant its approval to any other foreign currency loan proposed to be raised by a person resident in India, which falls outside the scope of Schedules I, II and III, subject to such terms and conditions as it may consider necessary.

In Regulation 6, the heading and sub-regulations (1), the following heading and sub-regulations shall be substituted shall be substituted, by the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) (Second Amendment) Regulations, 2004

the existing sub-regulation (2) shall be renumbered as (4), by the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) (Second Amendment) Regulations, 2004

In the renumbered sub-regulation (4) the words "Where prior approval is required" may be added in the beginning, by the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) (Second Amendment) Regulations, 2004

In the existing sub-regulation (3) shall be substituted by "The Reserve Bank may grant its approval to any other foreign currency loan proposed to be raised by a person resident in India, which falls outside the scope of Schedules I, II and III, subject to such terms and conditions as it may consider necessary", This sub-regulation shall be renumbered as sub-regulation (5), by the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) (Second Amendment) Regulations, 2004

SCHEDULE 1

Borrowings in Foreign Exchange under the Automatic Route

9 In the existing 'Schedule' attached to the Regulations shall be replaced by Schedule I, Schedule II and Schedule III, by the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) (Second Amendment) Regulations, 2004¹⁰ In the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, in Schedule I, in paragraph (1), for sub-paragraph (i) shall be substituted ,an old para as : "(i) Eligibility. Any corporate registered under the Companies Act, 1956 shall be eligible to borrow in terms of this Schedule However, financial intermediaries (such as banks, financial institutions (FIs), housing financing companies, Non-Banking Finance Companies, Trusts, Non-Profit making organisations (NPOs), Micro Finance Institutions, proprietorship/partnership concerns and individuals are not eligible to borrow under the Automatic Route." by the the Foreign Exchange Management Act, 1999 (42 of 1999).¹¹ In the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, in Schedule I, in paragraph (1), for sub-paragraph (ii) shall be substituted ,an old para as : "(ii) Amount. The borrowing in foreign exchange under the Automatic Route whether raised in trenches or otherwise shall not exceed US\$ 500 Million in any one financial year (April-March)." by the the Foreign Exchange Management Act, 1999 (42 of 1999).¹² In the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, in Schedule I, in paragraph (1), in sub-paragraph (iv), in clause A, after sub-clause (c), the following shall be inserted: "(d) any other eligible purpose as specified by the Reserve Bank." by the the Foreign Exchange Management Act, 1999 (42 of 1999).

SCHEDULE I

[See Regulation 6(1)]

Borrowings in Foreign Exchange under the Automatic Route

(1) Borrowing in Foreign exchange up to US\$500 Million or its equivalent. The borrowing in foreign exchange by a person resident in India under the Automatic Route is subject to the terms and conditions set out in this schedule.

(i) Eligibility:

(a) Any company registered under the Companies Act, 1956, other than a financial intermediary (such as a bank, financial institution, housing finance company

and a non-banking finance company) is eligible to borrow under this Schedule.

(b) Non-Government organizations engaged in micro-finance activities may borrow in foreign exchange under this Schedule under such terms and conditions as specified by the Reserve Bank from time to time.

(c) Any other entity as

specified by the Reserve Bank."

(ii) Amount:

(a) The borrowing in foreign exchange by an entity as specified in paragraph (i) (a) of section 1 of Schedule I, under the automatic route whether raised in tranches or otherwise, shall not exceed USD 500 million or equivalent in any one financial year

(April-March).

(b) The borrowings in foreign currency under as specified in paragraph (i) (b) of section 1 of Schedule 1, by a non-government organization engaged in micro-finance activities shall not exceed USD 5 million or equivalent during a financial year (April-March)."

(iii) Lenders. The borrowings in foreign

currency by way of issue of bonds, floating rate notes or other debt instruments by whatever name called may be made from:

(a) International bank or export credit agency or international capital market or

(b) Multilateral financial institutions, namely, IFC, ADB, CDC etc., or

(c) Foreign collaborator or foreign equity holder as specified by the Reserve Bank or

(d) Supplier of equipments provided the amount of loan raised does not exceed the total cost of the equipment being supplied by the lender or

(e) Any other eligible entity as prescribed by the Reserve Bank in

consultation with
Government of India.

(iv) Purpose (End-use).(A)
Borrowing in foreign
exchange in terms of this
Schedule
may be for any of the
following purposes, namely:

(a) for investment (such
as import of capital
goods, new projects,
modernisation/expansion
of existing production
units) in real sector -

industrial sector including small and medium enterprises (SME) and infrastructure sector -in India.

Explanation. The following sectors will qualify as infrastructure sectors, namely:

Power,
Telecommunications,
Railways, Roads including bridges, Ports, Industrial Parks and Urban infrastructure

(water supply, sanitation and sewage projects),

(b) for first stage acquisition of shares in the disinvestment process and also in the mandatory second stage offer to the public under the Government's disinvestment programme of PSU shares,

(c) for direct investment in overseas Joint,

Ventures (JV)/Wholly Owned Subsidiaries (WOS) subject to the existing guidelines on Indian Direct Investment in JV/WOS abroad.

(d) any other eligible purpose as specified by the Reserve Bank.

(B) Other than the purposes specified hereinabove, the borrowings shall not be utilised for any other purpose including the

following purposes, namely:

On-lending, investment in capital (stock) market, investment in real estate business, working capital requirements, general corporate purpose, and repayment of Rupee loans

(v) Maturity. The maturity of the borrowings in foreign exchange shall be as under :

Amount	Minimum
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		Average Maturity
(i)	Up to US \$ 20 Million or equivalent	Not less than 3 years.
(ii)	Exceeding US\$ 20 Million and upto US \$ 500 Million or equivalent	Not less than 5 years.

(vi) All-in-cost ceilings. The all-in-cost ceilings for the borrowing in foreign exchange shall be specified by the

Reserve Bank from time to time.

(vii) Security. The borrower shall be at liberty to provide security to the lender/suppliers, provided that-

(a) Where the security is in form of immovable property in India or shares of a company in India, it shall be subject to Regulation 8 of Notification No. FEMA.

21/2000-RB dt.
3.5.2000 and Regulation
3 of Notification No.
FEMA. 20/2000-RB dt.
3.5.2000, respectively.

(b) Guarantee. Banks,
financial institutions and
Non-Banking Finance
Companies

shall not provide (issue)
guarantee or Letter of
Comfort or Standby
Letter of Credit in favour
of overseas lender on
behalf of their

constituents for their borrowings in foreign exchange.

(viii)

Prepayment. Notwithstanding the provisions of clause (v) above, prepayment of outstanding foreign currency loan may be made as per the directives issued by the Reserve Bank from time to time.

(ix) Parking of loan amount abroad. The

proceeds of borrowings in foreign exchange shall be parked abroad until actual requirement in India.

(x) Loan Agreement. The loan agreement entered into by the borrower with the overseas lender shall strictly conform with these Regulations. The procedure for obtaining loan registration number would be prescribed by the Reserve Bank.

(ix) Drawal of Loan. Draw-downs of borrowing in foreign exchange shall be made strictly in accordance with the terms of the loan agreement only after obtaining the loan registration number from the Reserve bank.

(xii) Reporting. The borrower shall adhere to the reporting procedure as specified by the Reserve Bank from time to time.

(xiii) Debt Servicing. The designated Authorised Dealer (AD) shall have the general permission to make remittances of principal, interest and other charges in conformity with the guidelines on borrowing in foreign exchange from overseas, issued by Central Government/the Reserve Bank from time to time.

2. Refinancing of existing borrowing in foreign exchange. (i) Refinancing of

outstanding amounts of loans raised in foreign exchange in accordance with the Act or the Rules and Regulations made thereunder, may be made by making fresh borrowing in foreign exchange in accordance with this Schedule provided that there is reduction in cost of borrowing and the outstanding maturity of the original borrowing is not reduced.

(ii) Provisions of subparagraphs (ii), and (v) of paragraph 1 shall not apply to the borrowings made under clause 2(i).

SCHEDULE 2

Borrowings in Foreign Exchange under the Approval Route

SCHEDULE II

[See Regulation 6(2)]

Borrowings in Foreign
Exchange under the
Approval Route

(1) The borrowing in foreign currency (other than the borrowings under Schedule I) by a person resident in India may be made under any of the types set out in this Schedule.

(2) The application for the

approval of the Reserve Bank under Regulation 6(2) for borrowing under any of the types where its approval is required shall be made in the Form as specified by the Reserve Bank from time to time.

(3) The borrowing in foreign exchange by a person resident in India under the Approval Route is subject to the terms and conditions set out in this schedule.

(i) Eligibility. The following entities shall be eligible to apply for foreign currency borrowings under the Approval Route -

(a) Any corporate registered under the Company's Act, 1956.

(b) Financial institutions dealing exclusively with infrastructure or export finance

such as IDFC, IL & FS,
Power Finance

Corporation, Power
Trading Corporation,
IRCON and Exim Bank.

(c) Banks and financial institutions which had participated in the textile or steel sector restructuring package as approved by the Central Government.

(d) Entities falling outside the purview of the Automatic Route as per Schedule I.

(ii) Landers. The borrowings in foreign currency by way of issue of bonds, floating rate notes or other debt instruments by whatever name called may be made from:

(a) International bank or export credit agency or international capital market or

(b) Multilateral financial institutions, namely, IFC,

ADB, CDC etc., or

(c) Foreign collaborator or foreign equity holder as specified by the Reserve Bank or

(d) Supplier of equipments provided the amount of loan raised does not exceed the total cost of the equipment being supplied by the lender or

(e) Any other eligible entity as prescribed by the Reserve Bank in consultation with Government of India.

(iii) Purpose (End-use). (A) Borrowing in foreign exchange in terms of this Schedule may be for any of the following purposes, namely:

(a) for investment (such as import of capital goods, new projects,

modernisation/expansion of existing production units) in real sector - industrial sector including small and medium enterprises (SME) and infrastructure sector -in India.

Explanation. The following sectors will qualify as infrastructure projects, namely:

(i) Power,
Telecommunications,

Railways, Roads including bridges, Ports, Industrial Parks and Urban infrastructure (water supply, sanitation and sewage projects).

(b) for first stage acquisition of shares in the disinvestment process and also in the mandatory second stage offer to the public under the Government's disinvestment programme of PSU

shares.

(c) for direct investment in overseas Joint Ventures (JV) Wholly Owned Subsidiaries

(WOS) subject to the existing guidelines on Indian Direct Investment in JV/WOS abroad.

(B) Other than the purposes specified hereinabove, the borrowings shall not be utilised for any other purpose including the

following purposes, namely:

On-lending, investment in capital (stock) market, investment in real estate business, working capital requirements, general corporate purpose and repayment of Rupee loans.

(iv) Maturity. The maturity of the borrowings in foreign exchange shall be as under :

Amount	
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		Minimum Average Maturity
(i)	Up to US \$ 20 Million or equivalent	Not less than 3 years.
(ii)	Exceeding US\$ 20 Million and upto US \$ 500 Million or equivalent	Not less than 5 years.

(v) All-in-ceilings. The all-in-cost ceilings for the borrowing in foreign

exchange shall be specified by the Reserve Bank from time to time.

(vi) Security. The borrower shall be at liberty to provide security to the lender/suppliers, provided that:

(a) Where the security is in form of immovable property in India or shares of a company in India, it shall be subject to Regulation 8 of

Notification No. FEMA
21/2000-RB dt.
3.5.2000 and Regulation
3 of Notification No.
FEMA 20/2000-RB dt.
3.5.2000, respectively.

(b) Guarantee. Banks,
financial institutions and
Non-Banking Finance
Companies

shall not provide (issue)
guarantee or Letter of
Comfort or Standby
Letter of Credit in favour
of overseas lender on

behalf of their constituents for their borrowings in foreign exchange.

Exception. Banks, financial institutions and Non-Banking Finance Companies shall be permitted to provide Dank Guarantee, or Letter of Comfort or Standby Letter of Credit in favour of Small and Medium Enterprises (SMEs) with the

approval of the Reserve Bank.

(vii)

Prepayment. Notwithstanding the provisions of clause (iv) above, prepayment of outstanding foreign currency loan may be made as per the directives issued by the Reserve Bank from time to time.

(viii) Parking of loan amount abroad. The proceeds of borrowings in

foreign exchange shall be parked abroad until actual requirement in India.

(ix) Loan Agreement. The loan agreement entered into by the borrower with the overseas lender shall strictly conform with these Regulations. The procedure for obtaining loan registration number would be as specified by the Reserve Bank.

(x) Drawal of loan. Draw-

downs of borrowing in foreign exchange shall be made strictly in accordance with the terms of the loan agreement only after obtaining the loan registration number from the reserve Bank.

(xi) Reporting. The borrower shall adhere to the reporting procedure as specified by The Reserve Bank from time to time.

(xii) Debt Servicing. The

d e s i g n a t e d Authorised Dealer (AD) shall have the general permission to make remittances of principal, interest and other charges in conformity with the guidelines on borrowing in foreign exchange from overseas, issued by Central Government/the Reserve Bank from time to time.

(4) Refinancing of existing borrowing in foreign exchange.(i) Refinancing of outstanding amounts of

loans raised in foreign exchange in accordance with the Act or the Rules and Regulations made thereunder, may be made by making fresh borrowing in foreign exchange in accordance with this Schedule provided that there is reduction in cost of borrowing and the outstanding maturity of the original borrowing is not reduced.

(ii) Provisions of subparagraphs (iv) of paragraph 3 shall not apply to the

borrowings made under
clause 4(i).

SCHEDULE 3
Trade Credit

SCHEDULE III

[See Regulation 6(3)]

Trade Credit

(1) Foreign currency credit/loan extended for imports into India by the overseas supplier, bank and financial institution for original maturity of less than 3 years is hereinafter referred to as Trade Credit' for imports. Depending upon the source of finance, such trade credit includes suppliers' credit or buyers' credit.

(2) Authorised Dealers
(ADs) in foreign exchange
are permitted to approve
trade credits up to USD 20
million per import

transaction for import of all items permissible under the Foreign Trade Policy (except Gold) with a maturity period (from the date of shipment) up to one year. For import of capital goods, ADs are permitted to approve trade credits up to USD 20 million per import transaction with a maturity period of more than one year and less than three years. No roll-over/extension will be permitted

by the AD beyond the permissible period.

(3) Trade Credit exceeding USD 20 million per import transaction will require the prior approval of the Reserve Bank of India.