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News Alert
9 July, 2012



RBI re-opens foreign currency convertible bonds buyback window

With India Inc. facing a challenge in redeeming foreign currency convertible bonds (FCCBs) especially during current financial year, the Reserve Bank of India (RBI) has decided to continue its scheme of prepayment / buyback of FCCBs with certain modifications. The earlier scheme of RBI had expired on 31 March 2012.

In terms of the new scheme, the RBI will consider proposals from Indian companies for buyback of FCCBs **under the approval route** subject to following conditions:

a) The buyback value of FCCBs is at a minimum discount of 5% on the **accreted** value.

- b) In case the issuer is planning to raise a foreign currency borrowing for buyback of FCCBs, all applicable rules/ regulations relating to foreign currency borrowing under FEMA will need to be complied with.
- c) Other general conditions stipulated in Paragraph 5 of RBI's AP (DIR Series) Circular No. 39 dated 8 December 2008 will continue to be applicable (annexed herewith for ready reference).

The above facility shall come into force **with immediate effect** and the entire process of buyback should be completed by **31 March 2013** after which the scheme lapses.

On completion of the buyback, a report giving details of buyback, such as, the outstanding amount of FCCBs, accreted value of FCCBs bought back, rate at which FCCBs bought back, amount involved, and source/s of funds may be submitted, through the designated AD bank to the RBI.

Our Comments:

While the new scheme is likely to assist companies intending to buyback FCCBs prematurely, it is noteworthy that under the new scheme, the discount is to be computed vis-a-vis accreted value instead of the book value considered in the earlier scheme. This should be more meaningful from bondholders' perspective.

Source: RBI's AP(DIR Series) Circular No. 1 dated 5 July 2012

Annexure

General Conditions stipulated in Paragraph 5 of RBI's AP (DIR Series) Circular No. 39 dated 8 December 2008:

- (i) FCCB should have been issued in compliance with extant guidelines.
- (ii) FCCB should have been registered with the RBI, the Loan Registration Number (LRN) obtained and ECB 2 returns submitted up to date.
- (iii) No proceedings for contravention of FEMA are pending against the company.
- (iv) The right for buyback is vested with the issuer of FCCBs. However, the actual buyback is subject to the consent of the bondholders.
- (v) The FCCBs bought back / repurchased from the holders must be cancelled and should not be re-issued or re-sold.

- (vi) The buyback will not have any effect on the bond holders not opting for the buyback or on the non-participating bond holders of companies opting for the buyback.
- (vii) The Indian company shall open an escrow account with the branch or subsidiary of an Indian bank overseas or an international bank for buying back the FCCBs to ensure that the funds are used only for the buyback.

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