

FAQs (Forming an integral part of India Annex 2011)

1. Paragraph 3 of GMRA- Initiation, Confirmation, Termination

Q. The details to be stated in the confirmation of Transaction have been listed in paragraph 3. It provides inter alia for stating the date of repurchase. In case the Transaction is terminable on demand, it provides for stating that the Transaction is terminable on demand. The expression 'repo' has been defined in Section 45U(c) of RBI Act. In terms of the said definition the date of repurchase is mutually agreed. Termination of the agreement under certain circumstances may have the effect of advancing the date of repurchase. Even if it is possible under the terms of the Transaction to terminate the repo agreement before the date of repurchase, terminating the Transaction on demand (without mentioning the repurchase date) does not seem to fit into the definition of repo. The RBI Act and guidelines on repo are silent on the premature termination of a repo contract. Hence, the paragraph 3(iii) of GMRA does not seem suitable in Indian case.

Ans: The GMRA is an enabling umbrella document and is intended to cover all kinds of Transactions. It allows parties to undertake various different forms of Transactions under the same documentation framework. However, parties never the less will still have to comply with all applicable conditions and stipulations under law and regulation.

It is relevant to note that the term 'demand Transactions' appears at several different places (see paragraph 2(uu) and 3 in the Agreement). Deleting each of the references to 'demand Transactions' will perhaps make the India Annex needlessly bulky. Our legal advisor's view therefore is that it is not necessary to undertake such significant amendments as market participants are in any event not currently permitted to enter into Transactions 'terminable upon demand'. The references are merely enabling and yet do not impact dealings as currently envisaged.

2. Paragraph 4 of GMRA- Margin Maintenance

Q. The RBI's Direction provides for haircut; however there is no provision in GMRA about the same. Whether it needs to be specifically stipulated in GMRA.

Ans. Paragraph 4 is intended to provide collateral where one party has a 'Net Exposure' to the other and is not relevant in the current context. The provisions relating to Haircut for each Transaction will have to be set out in each confirmation.

3. Paragraph 5 of GMRA-Income Payments and paragraph 6- Payments and Transfer

Q. Under paragraph 5 even if the issuer of corporate debt security pays Rs. 90 as interest payment (after deducting Rs. 10 as TDS in terms of Section 193 of the Income Tax Act, 1961) the parties are required to settle the Transaction as though the entire amount of Rs. 100/- is paid by the Issuer. Under Clause (b) of paragraph 6 it is open to the parties as to

how the deduction of tax at source by the issuer will be dealt with. The inconsistencies needs to be removed in such a way as would adequately deal with the deduction of tax at source which is a statutory requirement without placing either of the parties in an unjust position with respect to interest payment and tax deduction. This needs to be examined from operational and tax point of view.

Ans. The issue of TDS by an issuer on coupon payments does not arise for bonds issued after 1st June, 2008 and which are dematerialized and listed on a recognized stock exchange. For bonds issued prior to 1st June, 2008, in case the issuer deducts tax at source on the coupon payment, the holder of the bond would receive form 16 for such deduction. The holder would then treat this as an "Advance Tax" and pass on the entire gross coupon amount to the owner of the bond as detailed in para 5 of GMRA.

4. Paragraph 7 of GMRA - Contractual Currency

Q. Clause (a) of paragraph 7 allows a payee to accept the payment in any other currency. Whether such a requirement is relevant, when GMRA is intended for domestic transfer of securities/funds and contractual currency is INR. Since the base currency in terms of paragraph 1(g) of India Annex is INR, it is felt that payer should not be allowed to make payment in a currency other than INR.

Ans. Amendment to paragraph 7(a) is not necessary as in any case the 'currency of the Purchase Price' is INR and the 'Base Currency' is also INR.

5. Paragraph 10 of GMRA- Events of Default

Q. Clause (a) of paragraph 10 lists event of defaults, however no notice period has been specified except for serial No. (x). Whether it will be advisable to specify appropriate time period for individual event of default? If yes, what could be specific time period for individual events of default?

Ans. Clause (x) of paragraph 10 provides for failure to perform obligations other than those mentioned under paragraph 10(a) from Clause (i) to (ix). The time period is intentionally not provided for Clause (i) to (ix) of paragraph 10(a) so that party may terminate the GMRA as early as possible after a default. It may not be appropriate to alter the time lines in the market standard documentation. Parties are of course free to incorporate changes to the timelines if they so desire. However, in our experience parties prefer to retain the time lines as the standard. Our preference therefore is not to alter paragraph 10 to provide for any notice or grace period.

6. 6. Credit Support Provider

Q. Does GMRA address the risk arising out of the failure of the issuer of underlying corporate debt securities?

Ans. GMRA is meant for addressing counterparty risk in repo transactions. Safegaurds have been provided with respect to margin maintenance, events of default etc. for repo transations in corporate bonds. The credit risk of the underlying bond needs to be hedged separately with hedging products like Credit Default Swaps.