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Regulatory Alert
Tracking change

External Commercial Borrowing (ECB) – Revised Policy Framework

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Background

The present External Commercial Borrowing (ECB) policy introduced in 2005 to attract flow of funds by resident entities from abroad was amended from time to time taking into account the emerging financing needs of the Indian entities and the macroeconomic developments by constantly revising all-in-cost ceilings limits, bringing more resident entities as eligible borrowers, recognizing more entities as lenders, expanding end-uses, etc. Sector specific liberalizations were also announced depending upon the requirement of specific sector like telecom, infrastructure and aviation.

Considering the time elapsed, the changes introduced in the financing ecosystem and evolving macro-economic situation, which *inter alia*, allows issuance of Indian Rupee (INR) denominated bonds overseas by a wide set of borrowers, RBI had placed a draft of the proposed ECB policy framework in the public domain on 23 September 2015 for wider consultation. Based on the responses received and in consultation with the Government of India, RBI on 30 November 2015 has prescribed a revised ECB policy framework which is based on the following principles:

- Liberalization of restrictions imposed on end uses, higher all-in-cost ceiling etc. for long term foreign currency borrowings as the extended term makes repayments more sustainable and minimizes roll-over risks for the borrower;
- Liberal approach for Indian Rupee (INR) denominated ECBs where the currency risk is borne by the lender;
- Expansion of the list of overseas lenders to include long term lenders like Sovereign Wealth Funds, Pension Funds, insurance companies;
- Only a small negative list of end-use requirements applicable to long-term ECBs and INR denominated ECBs;
- Raising of limit for small value ECBs with Minimum Average Maturity of 3 years to USD 50 million from the existing USD 20 million; and
- Alignment of the list of infrastructure entities eligible for ECB with the Harmonized List of the Government of India.

The new ECB policy framework will come into force from the date of publication, in the Official Gazette, of the relevant Regulations issued under FEMA.

The revised ECB policy framework will be reviewed after 1 year based on the experience and evolving macro-economic situation.

Highlights of the revised ECB Policy

Key highlights of the major parameters governing ECB policy

- The revised ECB policy framework comprise of the following three tracks:

Track I	Track II	Track III
Medium term **foreign currency denominated ECB** with Minimum Average Maturity (MAM) of 3/5 years or more but less than MAM of 10 years	Long term **foreign currency denominated ECB** with MAM of 10 years or more.	**Indian Rupee denominated ECB** with MAM of 3/5 years or more but less than MAM of 10 years

- ECBs can be raised by permitted resident entities from recognized non-resident entities either under the automatic route or approval route.
- The broad guidelines for the revised ECB policy framework specifying the parameters and other terms & conditions are given in brief below. These parameters will apply in totality and not on a standalone basis.

Parameter	Track I	Track II	Track III
Nature of ECB and Minimum Average Maturity (MAM)	Foreign currency denominated ECB up to USD 50 million or its equivalent with MAM of 3 years or more and for ECB beyond USD 50	Long term foreign currency denominated ECB with MAM of 10 years or more, irrespective of the amount involved.	Indian Rupee denominated ECB up to USD 50 million or its equivalent with MAM of 3 years or more and for ECB beyond USD 50 million or its equivalent,

	million or its equivalent, MAM of 5 years or more.		MAM of 5 years or more.
Eligible Borrowers **(Eligible entities to raise ECB)**	• Companies engaged in manufacturing, software development, shipping and airlines. • SIDBI. • Units in SEZs. • Export Import Bank of India (only under the approval route).	• All entities listed under Track I. • Companies in infrastructure sector. • Holding companies. • Core Investment Companies (CICs). • Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (INVITs) governed by SEBI.	• All entities listed under Track II. • All NBFCs. • NBFCs, Not for Profit companies, Societies, trusts and cooperatives, NGOs which are engaged in micro finance activities. • Companies engaged in miscellaneous services like R&D, training (other than educational institutes), supporting infrastructure, providing logistics services. • Developers of SEZs/ National Manufacturing and Investment Zones.
Recognized Lenders / Investors	• International banks. • International capital markets.	• All entities listed under Track I except overseas	• All entities listed under Track I except overseas branches /

	• Multilateral financial institutions / regional financial institutions and Government owned financial institutions. • Export credit agencies. • Suppliers of equipment. • Foreign equity holders. • Overseas long term investors such as: a) prudentially regulated financial entities; b) Pension funds; c) Insurance companies; d) Sovereign Wealth Funds; e) Financial institutions located in International Financial Services	branches / subsidiaries of Indian banks.	subsidiaries of Indian banks. • In case of NBFC-MFIs, other eligible MFIs, not for profit companies and NGOs, can avail ECB from overseas organizations and individuals (subject to conditions).

	Centers in India • Overseas branches / subsidiaries of Indian banks (subject to conditions)		
All-in-cost ceiling	• ECB with MAM of 3 to 5 years - 6 month LIBOR or applicable bench mark for the respective currency + 300 basis points • ECB with average maturity period of more than 5 years – 6 month LIBOR or applicable bench mark for the respective currency + 450 basis points • Penal interest, if any, for default or breach of covenants should not be more than 2% over and above the contracted rate of interest.	• The maximum spread over the 6 month LIBOR or applicable bench mark for the respective currency will be 500 basis points per annum. • Penal interest, if any, for default or breach of covenants should not be more than 2% over and above the contracted rate of interest.	• The all-in-cost should be in line with the market conditions.

Permitted End-uses	ECB proceeds can be utilized for capital expenditure in the form of: • Import of capital goods including payment towards import of services. technical know-how and license fees provided they are part of these capital goods; • Local sourcing of capital goods; • New project; • Modernization /expansion of existing units; • Overseas direct investment in Joint ventures/ Wholly owned subsidiaries; • Acquisition of shares of PSU's under the disinvestment programme of GOI;	The ECB proceeds can be used for all purposes excluding the following: • Real estate activities • Investing in capital market • Using the proceeds for domestic equity investment; • On-lending to other entities with any of the above objectives; • Purchase of land. Holding companies can also use ECB proceeds for providing loans to their infrastructure SPVs.	• NBFCs can use ECB proceeds for: a) On-lending to the infrastructure sector; b) providing hypothecated loans to domestic entities for acquisition of capital goods/equipment; and c) providing capital goods/equipment to domestic entities by way of lease and hire-purchases • Developers of SEZs/ NMIZs can raise ECB only for providing infrastructure facilities within SEZ/ NMIZ. • NBFC MFIs, other eligible MFIs, NGOs and not for profit companies

	• Refinancing of existing trade credit raised for import of capital goods; • Payment of capital goods imported but unpaid; • Refinancing of existing ECB without reducing the residual maturity. • SIDBI - only for the purpose of on lending to the borrowers in the MSME sector. • Units in SEZs – only for their own requirements • Shipping and airlines companies - only for import of vessels and aircrafts respectively. • ECB proceeds can be used for general corporate		registered under the Companies Act can raise ECB only for on-lending to self-help groups or for micro-credit or for bonafide micro finance activity including capacity building. • Other eligible entities, can use the ECB proceeds for all purposes excluding the following: a) Real estate activities b) Investing in capital market c) Using the proceeds for equity investment domestically; d) On-lending to other entities with any of the above objectives; e) Purchase of land.

	purpose (including working capital) provided the ECB is raised from the direct / indirect equity holder / Group Company for a minimum average maturity of 5 years. • ECBs for the following purposes - considered under the approval route: a) Import of second hand goods as per the Director General of Foreign Trade guidelines; b) On-lending by Exim Bank.		
Individual Limits	The individual limits of ECB that can be raised by eligible entities under the automatic route, per financial year, for all the three tracks are set out as under: a) Up to USD 750 million or equivalent for the companies in		

	infrastructure and manufacturing sectors; b) Up to USD 200 million or equivalent for companies in software sectors; c) Up to USD 100 million or equivalent for entities engaged in micro finance activities; and d) Up to USD 500 million or equivalent for remaining entities. ECB beyond the aforesaid limits will fall under approval route and would require prior RBI approval. These limits are separate from than the limits allowed under the framework for issuance of Rupee denominated bonds overseas, where the limits under the automatic route is USD 750 million per annum or its equivalent. Cases beyond this limit will require prior approval of RBI.

Conclusion

The revised ECB policy framework will provide the desired flexibility to the Indian entities to raise ECB as per the commercial requirements and to choose the track aligned to the business objectives.

It is expected that the revised ECB policy framework will attract higher flow of funds from abroad and will continue to be a major tool to calibrate the RBI policy towards capital account management in response to evolving macroeconomic situation.

RBI earlier on 29 September 2015, relaxed its policy regarding ECBs to allow Indian entities to raise funds by issue of rupee-denominated bonds overseas which is independent of the aforementioned new ECB policy framework.

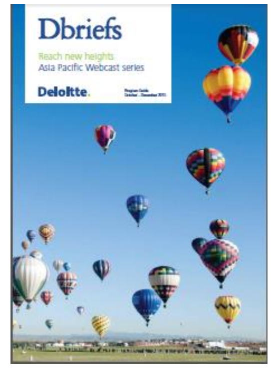
Formal amendments to the FEMA Regulations giving effect to the new ECB Policy framework are awaited.

Source: RBI Press release dated 30th November 2015 and A.P. (DIR Series) Circular No.32 issued by RBI on 30 November 2015.

Upcoming Dbriefs – Register

BEPS: Implementation of Transfer Pricing Changes (Part 2: India and Southeast Asia)

On 8 December 2015 from 11:30 AM to 12:30 PM IST



As the OECD / G20 BEPS project has moved into the implementation phase, we will provide an update of domestic legislative activities and timelines to incorporate the various BEPS transfer pricing changes into speci¬fic domestic tax regimes. We will also cover harmonization efforts for transfer pricing documentation rules and requirements from local perspectives. In this Part 2 webcast, our focus will be on India and Southeast Asia. For more information, visit the **Dbriefs** page

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Contacts

Ahmedabad
Heritage, 3rd Floor,
Near Gujarat Vidyapith,
Off Ashram Road,
Ahmedabad – 380 014.
Tel: + 91 (079) 2758 2542
Fax: + 91 (079) 2758 2551

Bangalore
Deloitte Centre, Anchorage II,
100/2, Richmond Road,
Bangalore 560 025.
Tel: +91 (080) 6627 6000
Fax: +91 (080) 6627 6010

Chennai
No.52, Venkatanarayana Road,
7th Floor, ASV N Ramana Tower,
T-Nagar,
Chennai 600 017.
Tel: +91 (044) 6688 5000
Fax: +91 (044) 6688 5050

Coimbatore
Shanmugha Manram
41, Race Course,
Coimbatore
Tamil Nadu - 641018
Tel: + 91 (0422) 439 2801
Fax: +91 (0422) 222 3615

Delhi/Gurgaon
Building 10,
Tower B, 7th Floor,
DLF Cyber City,
Gurgaon 122 002
Tel : +91 (0124) 679 2000
Fax : + 91 (0124) 679 2012

Hyderabad
1-8-384 and 385, 3rd Floor,
Gowra Grand S.P.Road,
Begumpet,
Secunderabad – 500 003.
Tel: +91 (040) 6603 2600
Fax:+91 (040) 6603 2714

Kolkata
Bengal Intelligent Park Building Alpha,
1st floor, Block EP and GP Sector V,
Salt Lake Electronics Complex,
Kolkata - 700 091.
Tel : + 91 (033) 6612 1000
Fax : + 91 (033) 6612 1001

Mumbai
Indiabulls Finance Centre,
Tower 3, 28th Floor,
Elphinstone Mill Compound,
Senapati Bapat Marg, Elphinstone (W),
Mumbai – 400013
Tel: + 91 (022) 6185 4000
Fax: + 91 (022) 6185 4101

Pune
106, B-Wing, 7th Floor,
ICC Trade Tower,
Senapati Bapat Road,
Pune – 411 016.
Tel: + 91 (020) 6624 4600
Fax: +91 (020) 6624 4605

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