

INTRODUCTION

The Reserve Bank of India (RBI) has released the revised framework for External Commercial Borrowings (“**Revised ECB Framework**”)¹. In RBI’s view :

“sufficient time has passed since the extant ECB framework was operationalised, a need was felt to undertake a review based on the experience gained in administering the ECB regime and the current financing ecosystem which inter alia, allows issuance of Indian Rupee (INR) denominated bonds overseas by a wide set of borrowers.”

The Revised ECB Framework released vide RBI circular dated 30 November 2015, bifurcates the ECB’s into those denominated in foreign currency and ECB’s denominated in INR, thereby segregating these ECB’s into separate tracks. The Framework, *amongst others*, also liberalises the end-use restrictions and expands the list of overseas lenders.

¹ External Commercial Borrowings (ECB) Policy – Revised Framework published vide A.P. (DIR Series) Circular No. 32 dated 30 November 2015

KEY INSIGHTS

Definition of ECB and Forms of ECB

ECBs are borrowings raised by permitted resident entities from recognised non-resident entities. Borrowings raised under the ECB framework can be in the following forms:

- i. Bank loans;
- ii. Securitized instruments (e.g. floating rate notes and fixed rate bonds, non-convertible, optionally convertible or partially convertible preference shares / debentures);
- iii. Buyers' credit;
- iv. Suppliers' credit;
- v. Foreign Currency Convertible Bonds (FCCBs);
- vi. Financial Lease; and
- vii. Foreign Currency Exchangeable Bonds (FCEBs)

TRACK I (Short Term ECB In Foreign Currency)	TRACK II (Long Term ECB in Foreign Currency)	TRACK III (ECB in INR)
Minimum Average Maturity (“MAM”)		
MAM of 3/5 years: <ul style="list-style-type: none"> ▪ Up to USD 50 mn²:3 years ▪ Beyond USD 50 mn:5 years 	MAM of 10 years irrespective of the amount	Same as under Track I.
Eligible Borrowers:		
<ul style="list-style-type: none"> • Companies in: <ul style="list-style-type: none"> - manufacturing - software development sectors - shipping and airlines companies 	<ul style="list-style-type: none"> • All entities listed under Track I. • Companies in infrastructure sector. • Holding companies. 	<ul style="list-style-type: none"> • All entities listed under Track II. • All Non-Banking Financial Companies (NBFCs). • Entities engaged in Micro Finance activities viz.

² Earlier this was USD 20 mn

<ul style="list-style-type: none"> • Small Industries Development Bank of India (SIDBI) • Units in Special Economic Zones (SEZs) • Export import bank of India (Exim Bank) (only under approval route) 	<ul style="list-style-type: none"> • Core Investment Companies (CICs). • Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (INVITs) falling under the regulatory framework of the Securities and Exchange Board of India (SEBI). 	<ul style="list-style-type: none"> - Institutions (NBFCs-MFIs), Not for Profit companies registered under the Companies Act, 1956/2013, - Societies, trusts and cooperatives (registered under the Societies Registration Act, 1860, Indian Trust Act, 1882 and State-level Cooperative Acts/Multi-level Cooperative Act/State-level mutually aided Cooperative Acts respectively) - Non-Government Organisations (NGOs) • Companies engaged in miscellaneous services viz. <ul style="list-style-type: none"> - research and development (R&D) - training (other than educational institutes) - companies supporting infrastructure - companies providing logistics services. • Developers of Special Economic Zones (SEZs)/National Manufacturing and
---	---	---

		Investment Zones (NMIZs).
<p>KEY ASPECTS:</p> <ul style="list-style-type: none"> • REITs/INVITs eligible to raise ECB under Track II and III • LLP's out of the list of borrowers • For the purpose of raising ECB by companies in infrastructure sector (Track II), Harmonised Master List of Infrastructure sub-sectors approved by Government of India vide Notification F. No. 13/06/2009-INF dated March 27, 2012 as amended / updated from time to time will be considered. • Entities engaged in micro-finance activities to be eligible to raise ECB: <ul style="list-style-type: none"> - should have a satisfactory borrowing relationship for atleast three years with an AD Cat I bank in India, and - should have a certificate of due diligence on 'fit and proper' status from the AD Cat I bank. 		
Recognised Lenders/Investors:		
<ul style="list-style-type: none"> • International banks. • International capital markets. • Multilateral financial institutions/ regional financial institutions & Government owned financial 	<p>All entities listed under Track I except overseas branches / subsidiaries of Indian banks.</p>	<ul style="list-style-type: none"> • All entities listed under Track I except overseas branches / subsidiaries of Indian banks. • In case of NBFCs-MFIs, other eligible MFIs, not for profit companies and NGOs, ECB can also be availed from

<p>institutions</p> <ul style="list-style-type: none"> • Export credit agencies. • Suppliers of equipment. • Foreign equity holders. • Overseas long term investors such as: <ul style="list-style-type: none"> - prudentially regulated financial entities; - Pension funds; - Insurance companies; - Sovereign Wealth Funds; - Financial institutions located in International Financial Services Centres in India • Overseas branches / subsidiaries of Indian banks 		<p>overseas organisations and individuals, subject to certain prescribed conditions</p>
<p>KEY ASPECTS:</p> <ul style="list-style-type: none"> • Definition and conditions prescribed for borrowing from foreign equity holders remains unchanged • Overseas long term investors constitutes a new category of lenders 		

- Participation of Indian banks, their overseas branches/subsidiaries will be subject of prudential norms issued by the Department of Banking Regulation (DBR) of the Reserve Bank.
- The Lenders are required to be from a country adhering to FATF and CFT guidelines and should furnish certificate of due diligence from an overseas bank certifying this *amongst others*

All In Cost (AIC) Ceiling:

- | | | |
|---|---|--|
| <ul style="list-style-type: none"> • ECB with minimum average maturity period of 3 to 5 years - 300 basis points per annum over 6 month LIBOR or applicable bench mark for the respective currency. • ECB with average maturity period of more than 5 years – 450 basis points per annum over 6 month LIBOR or applicable bench mark for the respective currency.³ | <ul style="list-style-type: none"> • The maximum spread over the benchmark will be 500 basis points per annum. • Remaining conditions will be as given under Track I. | <p>The all-in-cost should be in line with the market conditions.</p> |
|---|---|--|

³ 50 bps reduction in case of ECB with average maturity of three to five years and more than five years

<ul style="list-style-type: none"> • Penal interest– Maximum 2 per cent over and above the contracted rate of interest. 		
<p>KEY ASPECT:</p> <ul style="list-style-type: none"> • Guarantee fee is now included in AIC 		
<p>Permitted End-Uses:</p>		
<ul style="list-style-type: none"> • Can be utilised for capital expenditure such as: <ul style="list-style-type: none"> - Import of capital goods including payment towards import of services, technical know-how and license fees, provided the same are part of these capital goods; - Local sourcing of capital goods; - New project; - Modernisation/expansion of existing units; - Overseas direct investment in Joint ventures (JV)/ Wholly owned subsidiaries (WOS); 	<ul style="list-style-type: none"> • ECB proceeds can be used for all purposes excluding: <ul style="list-style-type: none"> - Real estate activities - Investing in capital market - Using the proceeds for equity investment domestically; - 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. 	<ul style="list-style-type: none"> • NBFCs can use ECB proceeds for: <ul style="list-style-type: none"> - Real estate activities - On-lending to the infrastructure sector; - providing hypothecated loans to domestic entities for acquisition of capital goods/equipments; and - 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

<ul style="list-style-type: none"> - Acquisition of shares of public sector undertakings at any stage of disinvestment under the disinvestment programme of the Government of India; - Refinancing of existing trade credit raised for import of capital goods; - Payment of capital goods already shipped / imported but unpaid; - Refinancing of existing ECB provided the residual maturity is not reduced. <ul style="list-style-type: none"> • SIDBI can raise ECB only for the purpose of on lending to the borrowers in the MSME sector under the MSME Development Act, 2006 • Units of SEZs can raise ECB only for their own requirements. • Shipping and airlines companies can raise ECB only for import of vessels and 		<p>facilities within SEZ/ NMIZ</p> <ul style="list-style-type: none"> • NBFCs-MFI, other eligible MFIs, NGOs and not for profit companies registered under the Companies Act, 1956/2013 can raise ECB only for on-lending to self-help groups or for micro-credit or for bonafide micro finance activity including capacity building. • For all purposes excluding the following: <ul style="list-style-type: none"> - Real estate activities - Investing in capital market - Using the proceeds for equity investment domestically; - On-lending to other entities with any of the above objectives; - Purchase of land
--	--	--

<p>aircrafts respectively.</p> <ul style="list-style-type: none"> • ECB proceeds can be used for general corporate purpose (including working capital) provided the ECB is raised from the direct / indirect equity holder or from a group company for a minimum average maturity of 5 years. • ECBs for the following purposes will be considered under the approval route: <ul style="list-style-type: none"> - Import of second hand goods in terms of DGFT guidelines; - On-lending by Exim Bank. 		
<p>KEY ASPECTS:</p> <ul style="list-style-type: none"> • Minimum average maturity for general corporate purpose reduced from seven years to five years • All purposes in the ambit under Track III excluding few purposes • Import of second-hand goods under Track I requires prior RBI approval 		

OTHER KEY ASPECTS

Individual Limits- The individual limits of ECB that can be raised under the automatic/approval route per financial year for all the three tracks are set out as under:

Sector(s)	Automatic Route	Approval Route
Infrastructure and manufacturing	Upto USD 750 million	Above USD 750 million
Software development	Upto USD 200 million	Above USD 200 million
Micro finance	Upto USD 100 million	Above USD 100 million
Others	Upto USD 500 million	Above USD 500 million

KEY ASPECTS:

- For computation of individual limits under track III, exchange rate prevailing on the date of agreement should be taken into account.
- Aforesaid limits are separate from the limits allowed under the framework for issuance of Rupee denominated bonds overseas.

Currency of Borrowing

- i. ECB can be raised in any freely convertible currency as well as in Indian Rupees.
- ii In case of Rupee denominated ECB, the non-resident lender, other than foreign equity holders, should mobilise INR through swaps/outright sale undertaken through an AD Cat I bank in India.
- iii. Change of currency of ECB from one convertible foreign currency to any other convertible foreign currency as well as to INR is freely permitted. Change of currency from INR to any foreign currency is, however, not permitted.
- iv. Change of currency of ECB into INR can be at the exchange rate prevailing on the date of the agreement between the parties concerned for such change or at an exchange rate which is less than the rate prevailing on the date of agreement if consented to by the ECB lender.

Hedging requirements

The entities raising ECB under the provisions of tracks I and II are required to follow the guidelines issued, if any, by the concerned sectoral or prudential regulator.

Security for raising ECB

Creation of charge on immovable assets, movable assets, financial securities and issue of corporate and/or personal guarantees in favour of overseas lender/security trustee, to secure the ECB to be raised/raised by the borrower) is permitted subject to the following:

- the underlying ECB is in compliance with the extant ECB guidelines
- Existence of a security clause in the loan agreement
- No objection certificate from existing domestic lenders, as applicable, has been obtained.

Issuance of Guarantee, etc. by Indian banks and Financial Institutions:

Issuance of guarantee, standby letter of credit, letter of undertaking or letter of comfort by Indian banks, All India Financial Institutions and NBFCs relating to ECB is not permitted. Further, financial intermediaries (viz. Indian banks, All India Financial Institutions, or NBFCs) shall not invest in FCCBs in any manner whatsoever.

Debt Equity Ratio

The borrowing entities will be governed by the leverage ratio prescribed, if any, by the sectoral or prudential regulator concerned.

Parking of ECB proceeds

- ECB proceeds meant only for foreign currency expenditure can be retained abroad pending utilization
- ECB borrowers permitted to park ECB proceeds in term deposits with AD banks up to 12 months (previously 6 months). The deposits should be unencumbered.

Prepayment of ECB

Prepayment of ECB may be allowed by AD Cat I banks subject to compliance with the stipulated minimum average maturity as applicable to the contracted loan under these guidelines.

Others

Other aspects of ECB Policy *inter-alia* conversion of ECB into equity, powers delegated to AD bank, reporting requirements are similar to those under extant ECB framework.

Transition

The entities raising ECB under extant framework can raise the said loans by March 31, 2016 provided the agreement in respect of the loan is already signed by the date the new framework comes into effect.

In the following scenarios, ECB can be raised under the existing framework subject to signing of the loan agreement and obtaining LRN⁴ by 31 March 2016:

- ECB for working capital by airline companies
- ECB for consistent foreign exchange earners under the USD 10 billion scheme
- ECB for low cost affordable housing projects⁵.

The revised framework will be reviewed after one year, based on the experience and the evolving macro-economic situation.

⁴ Loan Registration Number

⁵ low cost affordable housing projects as defined in the extant FDI Policy