

External Commercial Borrowings (ECB)

ECB is basically a loan availed by an Indian entity from a non-resident lender. Most of these loans are provided by foreign commercial banks and other institutions. It is a loan availed from non-resident lenders with a minimum average maturity of 3 years. External Commercial Borrowings (ECBs) includes commercial bank loans, buyers' credit, suppliers' credit, securitized instruments such as Floating Rate Notes and Fixed Rate Bonds etc., credit from official export credit agencies and commercial borrowings from Multilateral Financial Institutions. ECBs are being permitted by the Government as a source of finance for Indian Corporate for expansion of existing capacity as well as for fresh investment.

The framework of ECB comprises the following Tracks

Merging of Tracks: *Merging of Tracks I and II as “Foreign Currency denominated ECB” and merging of Track III and Rupee Denominated Bonds framework as “INR Denominated ECB”.*

Track I and Track II ECBs clubbed as 'Foreign currency denominated ECB' ("FCY ECB") **Forms of ECB:-**

<i>FCY denominated ECB</i>	<i>INR denominated ECB</i>
Any freely convertible Foreign Currency	Indian Rupee (INR)
Loans including bank loans; floating/ fixed rate notes/ bonds/ debentures (other than fully and compulsorily convertible instruments); Trade credits beyond 3 years; FCCBs; FCEBs and Financial Lease.	Loans including bank loans; floating/ fixed rate notes/ bonds/ debentures/ preference shares (other than fully and compulsorily convertible instruments); Trade credits beyond 3 years; and Financial Lease. Also, plain vanilla Rupee denominated bonds issued overseas (RDBs), which can be either placed privately or listed on exchanges as per host country regulations.

Minimum Average Maturity Period under all the tracks:

The Circular has removed the distinction between the **Minimum Average Maturity Period** applicable under the various tracks and RDB (*Rupee Denominated Bonds*). The new ECB framework has a single **Minimum Average Maturity Period** applicable to both FCY EBC* as well as INR ECB*.

Minimum average maturity period (MAMP) will be 3 years. However, manufacturing sector companies may raise ECBs with MAMP of 1 year for ECB up to USD 50 million or its equivalent per financial year. Further, if the ECB is raised from foreign equity holder and utilised for working capital purposes, general corporate purposes or repayment of Rupee loans, MAMP will be 5 years. The call and put option, if any, shall not be exercisable prior to completion of minimum average maturity.

*FCY EBC: - Foreign Currency denominated ECB

*INR EBC: - INR(Rupee) Denominated ECB

Eligible Borrower

The RBI has now done away with the specific eligibility requirements, and prescribed that any entity eligible to raise FDI shall be permitted to raise ECB. This is a positive move in considering that the list of entities eligible to raise FDI are sufficiently regulated in any case under the regulations applicable to FDI.

All entities eligible to receive FDI. Further, the following entities are also eligible to raise ECB:

- a) Port Trusts;
- b) Units in SEZ;
- c) SIDBI;
- d) EXIM Bank; and
- e) Registered entities engaged in micro-finance activities, viz., registered Not for Profit companies, registered societies/trusts/cooperatives and Non-Government Organisations (permitted only to raise INR ECB).

Recognised Lenders

The Circular revises the persons who are eligible to be lenders under the ECB framework. While earlier specified persons were only entitled to be eligible lender (under the 3 tracks), the RDB (*Rupee Denominated Bonds*) route was preferred since there was no specific requirement on a person to be an eligible lender. However, by now having the same eligibility for lenders under the FCY ECB and INR ECB, lenders who were not eligible under track I and track II are also now eligible.

The lender should be resident of FATF(*Financial Action Task Force*) or IOSCO(*The International Organisation of Securities Commissions*) compliant country, including on transfer of ECBs. However,

- a) Multilateral and Regional Financial Institutions where India is a member country will also be considered as recognised lenders;
- b) Individuals as lenders can only be permitted if they are foreign equity holders or for subscription to bonds/debentures listed abroad; and
- c) Foreign branches / subsidiaries of Indian banks are permitted as recognised lenders only for FCY ECB (except FCCBs and FCEBs). Foreign branches / subsidiaries of Indian banks, subject to applicable prudential norms, can participate as arrangers/underwriters/market-makers/traders for Rupee denominated Bonds issued overseas. However, underwriting by foreign branches/subsidiaries of Indian banks for issuances by Indian banks will not be allowed.

All in Cost

All-in cost ceiling per annum has been pegged at the benchmark rate* plus 450 bps* spread.

**Benchmark interest rate called base interest rate, an interest rate against which other interest rates are calculated.*

**Basis point (BPS) refers to a common unit of measure for interest rates and other percentages in finance.*

End Uses

The negative list, for which the ECB proceeds cannot be utilised, would include the following:

- a) Real estate activities.
- b) Investment in capital market.
- c) Equity investment.
- d) Working capital purposes except from foreign equity holder.
- e) General corporate purposes except from foreign equity holder.
- f) Repayment of Rupee loans except from foreign equity holder.
- g) On-lending to entities for the above activities.

Hedging provisions

Foreign Currency denominated ECB: - Infrastructure space companies shall have a board approved risk management policy. Further, such companies are required to mandatorily hedge 70 per cent of their ECB exposure in case average maturity of ECB is less than 5 years.

- The ECB borrower will be required to cover principal as well as coupon through financial hedges.
- A minimum tenor of one year of financial hedge would be required with periodic rollover duly ensuring that the exposure on account of ECB is not unhedged at any point during the currency of ECB.
- Natural hedge, in lieu of financial hedge, will be considered only to the extent of offsetting projected cash flows / revenues in matching currency, net of all other projected outflows.

INR (Rupee) Denominated ECB: - The overseas investors can hedge their exposure in Rupee through permitted derivative products with AD Category I banks in India. Investors can also access the domestic market through branches / subsidiaries of Indian banks abroad or branches of foreign banks with Indian presence on a back to back basis.

Change of currency of borrowing

<i>FCY denominated ECB</i>	<i>INR denominated ECB</i>
Change of currency of ECB from one freely convertible foreign currency to any other freely convertible foreign currency as well as to INR is freely permitted .	Change of currency from INR to any freely convertible foreign currency is not permitted .

Limit and leverage

The new policy allows all eligible borrowers to raise External Commercial Borrowings (ECB) up to \$750 million or equivalent per financial year under the automatic route replacing the existing sector wise limits.

All eligible borrowers can raise ECB up to USD 750 million or equivalent per financial year under automatic route. Further, in case of FCY denominated ECB raised from direct foreign equity holder ECB liability-equity ratio for ECBs raised under the automatic route cannot exceed 7:1. However, this ratio will not be applicable if outstanding amount of all ECBs,

including proposed one, is up to USD 5 million or equivalent. Further, the borrowing entities will also be governed by the guidelines on debt equity ratio issued, if any, by the sectoral or prudential regulator concerned.

**Any type of guarantee by Indian Banks, All India Financial Institutions and NBFCs relating to ECB is not permitted.*

Procedure to Raise ECB

All ECBs can be raised under the automatic route if they conform to the parameters prescribed under this framework. For approval route cases, the borrowers may approach the RBI with an application in prescribed format (Form ECB) for examination through their AD Category I bank. Such cases shall be considered keeping in view the overall guidelines, macroeconomic situation and merits of the specific proposals. ECB proposals received in the Reserve Bank above certain threshold limit (refixed from time to time) would be placed before the Empowered Committee set up by the Reserve Bank. The Empowered Committee will have external as well as internal members and the Reserve Bank will take a final decision in the cases taking into account recommendation of the Empowered Committee. Entities desirous to raise ECB under the automatic route may approach an AD Category I bank with their proposal along with duly filled in **Form ECB**.

Reporting Requirements

1. Loan Registration Number (LRN):
2. Monthly Reporting of actual transactions
3. Change in terms and conditions of ECB

ECB should happen only after obtaining the LRN from the Reserve Bank. To obtain the LRN, borrowers are required to submit duly certified Form ECB, which also contains terms and conditions of the ECB, in duplicate to the designated AD Category I bank. In turn, the AD Category I bank will forward one copy to the Director, Balance of Payments Statistics Division, Department of Statistics and Information Management (DSIM), Reserve Bank of India.

The borrowers are required to report actual ECB transactions through **Form ECB 2 Return** through the AD Category I bank on monthly basis so as to reach DSIM within seven working days from the close of month to which it relates. Changes, if any, in ECB parameters should also be incorporated in **Form ECB 2 Return**.

Changes in ECB parameters in consonance with the ECB norms should be reported to the DSIM through revised Form ECB at the earliest, in any case not later than 7 days from the changes effected.

Late Submission Fee (LSF) for delay in reporting

ECB proceeds before obtaining LRN or delay in submission of Form ECB 2 returns, by payment of late submission fees as detailed in the following matrix:

Sr. No.	Type of Return/Form	Period of delay	Applicable LSF
1	Form ECB 2	Up to 30 calendar days from due date of submission	INR 5,000
2	Form ECB 2/Form ECB	Up to three years from due date of submission/date of drawdown	INR 50,000 per year
3	Form ECB 2/Form ECB	Beyond three years from due date of submission/date of drawdown	INR 100,000 per year

Powers delegated to AD Category I banks to deal with ECB cases

The designated AD Category I banks can approve any requests from the borrowers for changes in respect of ECBs, except for FCCBs/FCEBs, duly ensuring that the changed conditions, including change in name of borrower/lender, transfer of ECB and any other parameters, comply with extant ECB norms and are with the consent of lender(s). Further, the following changes can be undertaken under automatic route:

1. **Change of the AD Category I bank**
2. **Cancellation of LRN**
3. **Refinancing of existing ECB**
4. **Conversion of ECB into equity**

The exchange rate to be considered is the exchange rate prevailing on the date of the agreement between the parties can be applied with a mutual agreement with the ECB lender.

5. **Security for raising ECB**
 - I) Creation of charge on immovable asset.
 - II) Creation of charge on movable asset.
 - III) Creation of charge over financial securities.
 - IV) Issue of corporate or personal guarantee.

Suggestions may be send to rupesh@cacsindia.com

Dr. S. Chandrasekaran | Senior Partner | Chandrasekaran Associates | Company Secretaries 11-F, Pocket Four | Mayur Vihar Phase One | Delhi - 110 091 | Tel. +91-11-2271 0514 sankara@cacsindia.com | info@cacsindia.com | www.cacsindia.com

DISCLAIMER

CACS Bulletin is not intended as a source of advertising or solicitation and the contents of the same should not be construed as professional / legal advice. Readers should take specific advice from a qualified professional when dealing with specific situations and should not consider this as an invitation for a professional-client relationship. Without the prior permission of Chandrasekaran Associates, Company Secretaries, the CACS Bulletin or content thereof or reference to it should not be made in any documentation or correspondences. We make no warranty of any kind with respect to the subject matter included herein or the completeness or accuracy of this issue of CACS Bulletin. While CACS has taken every care in the preparation of this Bulletin to ensure its accuracy, however, the Companies are requested to check the latest position with the original sources before acting. The firm and the partners are not responsible for any actions (or lack thereof) taken as a result of relying on or in any way using information contained in this issue of CACS Bulletin and in no event shall be liable for any damage or loss resulting from reliance on or use of this information. Without limiting the above the firm and the partners shall each have no responsibility for any act, error or omission, whether such acts, errors or omissions result from negligence, accident or any other cause.