ECB Policy – New Framework

December 2, 2015

In brief

The Reserve Bank of India (RBI) has issued a Circular dated 30 November 2015 outlining the new framework for External Commercial Borrowings (ECB), replacing the existing guidelines issued about a decade ago. The overarching principle of the new framework has been to liberalise and encourage long term ECBs denominated in foreign currency and ECBs denominated in INR. For this purpose, these ECBs have been segregated from other ECBs as separate 'Track II' and 'Track III' respectively under the new framework. Further, there have been various amendments made in respect of other ECBs having average maturity of less than 10 years.

In detail

The ECBs are classified under three 'Tracks' under the new framework[1]. The parameters *vis-à-vis* these 'Tracks' are as follows:

Track I (ECB in FCY over 3/5 average maturity)	Track II (ECB in FCY over 10 years average maturity)	Track III (ECB in INR)
Minimum Average Maturity		
• Up to USD 50 mn (earlier, USD 20 mn): 3 years • Beyond USD 50 mn: 5 years	10 years, irrespective of amount	• Same as Track I
Eligible Borrowers		
• Companies in following sectors: ○ Manufacturing sector ○ Software development ○ Shipping and airlines companies • Units in SEZs • Small Industries and Development Bank of India • Exim Bank (approval route)	• All entities under Track I • Companies in infrastructure sector (definition aligned with Harmonised Master List of Government of India) • Holding companies • Core investment companies • REITs and INVITs registered with SEBI	• All entities listed under Track II • All NBFCs • Entities engaged in micro finance activities, subject to conditions • Companies in Miscellaneous Services, viz. ○ R&D ○ Training(excluding educational institutes) ○ Companies supporting infrastructure ○ Logistic services • SEZs/NMIZs Developers

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

<table>
<tr><th>Track I(ECB in FCY over 3/5 average maturity)</th><th>Track II (ECB in FCY over 10 years average maturity)</th><th>Track III (ECB in INR)</th></tr>
<tr><td colspan="3">Key Remarks:
Logistic services companies, hitherto expressly excluded, are now eligible to avail ECB
Infrastructure sector borrowers now need to comply with 10 years MAM, unless ECB is denominated in INR
REITs/INVITs are now eligible to raise ECB under Track II and III
SEZ/NMIZ developers, hitherto under approval route, are now covered under automatic route under Track III
All NBFCs are now eligible to raise ECB under Track III, subject to end-use restrictions
Hotels and hospitals (earlier covered under specified service sectors) are not covered in the list
LLPs are still not included in the list of eligible borrowers</td></tr>
<tr><td colspan="3">Recognized Lenders/Investors:</td></tr>
<tr><td colspan="3">International banks
International capital markets
Multilateral/regional/Government-owned financial institutions
Export credit agencies
Suppliers of equipment
Foreign equity holders
Overseas long term investors such as:
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 (only for borrowers under Track I)
In case of MF entities under Track III, overseas organisations and individuals are included, subject to conditions</td></tr>
<tr><td colspan="3">Key Remarks:
Overseas long term investors is a new category under the recognised lender list
There is no change in the ECB Liability: Equity Ratio for ECBs from direct/ indirect equity holder
Lenders are required to be from a country adhering to FATF and CFT guidelines. Further, lenders are required to furnish certificate of due diligence from an overseas bank.</td></tr>
<tr><td colspan="3">All-in-Cost Ceiling (AIC)</td></tr>
<tr><td>Average maturity of 3-5 years: 300 bps over the 6-month LIBOR
Average maturity of above 5 years: 450 bps over the 6-month LIBOR
Penal interest: Maximum 2% over and above contracted interest rate</td><td>Maximum spread of 500 bps per annum over the benchmark has been prescribed.</td><td>In line with the market conditions</td></tr>
</table>

<table>
<tr><th>Track I(ECB in FCY over 3/5 average maturity)</th><th>Track II (ECB in FCY over 10 years average maturity)</th><th>Track III (ECB in INR)</th></tr>
<tr><td colspan="3">Key Remarks:
• AIC now includes guarantee fees
• 50 bps reduction for ECBs under Track I as compared to existing policy</td></tr>
<tr><td colspan="3">Permitted End-Uses:</td></tr>
<tr>
<td>• Capital expenditure in the form of:
o Import of capital goods (including for services, technical know-how and license fees, provided they are part of these capital goods)
o Local sourcing of capital goods
o New projects
o Modernisation/ expansion of existing units
o Investment in Joint ventures (JV)/ Wholly owned subsidiaries (WOS) overseas
o Acquisition of shares of PSUs under the disinvestment programme of Government of India
o Refinancing of existing trade credit raised for import of capital goods;
o Payment of capital goods already shipped/ imported but unpaid;
o Refinancing of existing ECB, provided residual maturity is not reduced.
• SIDBI - only for the purpose of on-lending to borrowers in the MSME sector.
• Units of SEZs - only for their own requirements.
• Shipping and airlines companies - only for import of vessels and aircrafts respectively.
• For general corporate purpose (including working capital), provided the ECB is raised from direct/ indirect equity holder, or from a group company, for a minimum average maturity of 5 years.
• ECBs under the approval route:
o Import of second-hand goods as per DGFT guidelines
o On-lending by Exim Bank</td>
<td>• Any end-use other than the following:
o Real estate activities
o Investing in capital market
o Using proceeds for equity investment domestically
o On-lending to other entities with any of the above objectives
o Purchase of land</td>
<td>• Any end-use other than the following:
o Real estate activities
o Investing in capital market
o Using the proceeds for equity investment domestically
o On-lending to other entities with any of the above objectives
o Purchase of land
• SEZs/ NMIZs Developers - Only for providing infra-structure facilities within SEZ/ NMIZ.
• NBFCs can use ECB proceeds for:
o On-lending to infrastructure sector
o Hypothecated loans to domestic entities for acquisition of capital goods/equipment
o Providing capital goods/equipment to domestic entities by way of lease / hire-purchase
• Entities in micro-finance sector- Only for on-lending to self-help groups or for micro-credit or for bona fide micro-finance activity including capacity building.</td>
</tr>
<tr><td colspan="3">Key Remarks:
• There are various new end-uses for ECB under Track I as compared to existing guidelines</td></tr>
</table>

Track I(ECB in FCY over 3/5 average maturity)	Track II (ECB in FCY over 10 years average maturity)	Track III (ECB in INR)

- ECB for general corporate purposes (working capital) can now be availed under Track I with MAM of 5 years (earlier repayment of principal was permitted after compliance with 7 year maturity)
- Import of second-hand goods (as per DGFT guidelines) under Track I now requires prior RBI approval
- Financial lease is now expressly covered as a mode of ECB under the new framework

Other Key Aspects under new Framework

Individual Limits under Automatic Route

- For companies in Infrastructure and Manufacturing Sectors – Up to USD 750 million
- For companies in software sector – Up to USD 200 million
- For entities engaged in micro-finance activities – Up to USD 100 million
- For other entities – Up to USD 500 million or equivalent

It is clarified that the above limits are separate from those prescribed for issuance of INR bonds overseas.

However, the new framework does not seem to cover call/put options permitted under the existing framework.

Currency of Borrowing

- ECB can be raised in any freely convertible currency as well as in INR.
- For INR-denominated ECB, lenders (other than foreign equity holders) are required to mobilise INR through swaps/outright sale undertaken through an AD Cat I bank in India.
- Change of currency from one convertible foreign currency to another convertible foreign currency/INR is freely permitted.
- Rate for conversion into INR: the rate prevailing on the date of agreement for such change or any exchange rate lower than the rate prevailing on the date of agreement.
- Change of currency from INR to foreign currency is not permitted.

Part refinancing of existing ECB

Raising fresh ECB for part refinance is permissible provided that (1) there is no reduction in residual maturity of the ECB and (2) fresh ECB has lower all-in-cost.

Parking of Proceeds

While the conditions concerning parking of ECB proceeds are similar to the existing framework, the new framework permits ECB borrowers 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

Pre-payment is permitted without any restriction on amount subject to compliance with stipulated minimum average maturity.

Change of designated AD bank

Change of designated AD Bank is permitted, subject to NOC from existing AD bank (without any requirement of undertaking any due diligence).

Dissemination of ECB Information

ECB details such as name of the borrower, amount, purpose and maturity under automatic/ approval routes would be put up on RBI's website on a monthly basis.

Other Aspects

Provisions concerning other aspects of ECB Policy such as security for ECB, conversion of ECB into equity, powers delegated to AD bank, reporting requirements are largely similar to those under existing framework.

Transitional Provisions

The new framework will come into force from the date of publication in the Official Gazette, of the relative regulations issued under FEMA. The same will be reviewed after one year, based on experience and evolving macro-economic situation.

ECB can be raised under existing framework up to 31 March 2016, provided the loan agreement is signed before the commencement of the revised framework.

Further, in following cases, ECB can be raised under existing framework, provided loan agreement is signed and LRN is obtained by 31 March 2016:

- ECB for working capital by airline companies
- ECB for consistent foreign exchange earners under USD 10 billion Scheme
- ECB for low cost affordable housing projects

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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