# EXTERNAL COMMERCIAL BORROWINGS

**The following write up on External Commercial Borrowings (ECB) is based on RBI Master Direction No. RBI/FED/2015-16/15 FED Master Direction No.5/2015-16 dated 1-1-2016 (updated to 31/12/2016). Candidates are advised to refer to the Master Directions for additional details.**

ECBs are commercial loans raised by eligible resident entities from recognised non-resident entities and should conform to parameters such as minimum maturity, permitted and non-permitted end-uses, maximum all-in-cost ceiling, etc.

The framework for raising loans through ECB, comprises of the following three tracks:

Track I : Medium term foreign currency denominated ECB with minimum average maturity of 3/5 years.

Track II : Long term foreign currency denominated ECB with minimum average maturity of 10 years.

Track III : Indian Rupee (INR) denominated ECB with minimum average maturity of 3/5 years.

The ECB Framework enables permitted resident entities to borrow from recognized non-resident entities in the following forms:

i. Loans including 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)

**IMPORTANT TERMS:**

‘All-in-Cost’ includes rate of interest, other fees, expenses, charges, guarantee fees whether paid in foreign currency or Indian Rupees (INR) but will not include commitment fees, pre-payment fees / charges, withholding tax payable in INR.

‘Designated Authorized Dealer Category I Bank’ is the bank branch which is designated by the ECB borrower for meeting the reporting requirements including obtention of the Loan Registration Number (LRN) from RBI, exercising the delegated powers under these guidelines and monitoring of ECB transactions.

‘Foreign Currency Convertible Bonds’ (FCCBs) refers to foreign currency denominated instruments which are issued in accordance with the Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depositary Receipt Mechanism) Scheme, 1993 as amended from time to time.

‘Foreign Currency Exchangeable Bonds’ (FCEBs) refers to foreign currency denominated instruments which are issued in accordance with the Issue of Foreign Currency Exchangeable Bonds Scheme, 2008.

The term ‘Foreign Equity Holder’ means (a) direct foreign equity holder with minimum 25% direct equity holding by the lender in the borrowing entity, (b) indirect equity holder with minimum indirect equity holding of 51%, and (c) group company with common overseas parent.

‘Joint Venture abroad’ means a foreign concern formed, registered or incorporated in a foreign country in accordance with the laws and regulations of that country and in which investment has been made by an Indian entity.

‘Wholly owned subsidiary abroad’ means a foreign concern formed, registered or incorporated in a foreign country in accordance with the laws and regulations of that country and whose entire capital is owned by an Indian entity.

**AVAILABLE ROUTES FOR RAISING ECB:**

ECBs can be raised either under the automatic route or under the approval route.

For the automatic route, the cases are examined by the Authorised Dealer Category-I (AD Category-I) banks.

Under the approval route, the prospective borrowers are required to send their requests to the RBI through their ADs for examination.

While the regulatory provisions are mostly similar, there are some differences in the form of amount of borrowing, eligibility of borrowers, permissible end-uses, etc. under the two routes. While the first six forms of borrowing, mentioned above, can be raised both under the automatic and approval routes, FCEBs can be issued only under the approval route.

Minimum Average Maturity Period: The minimum average maturities for the three tracks are as follows:

| TRACK I | TRACK II | TRACK III |
|---|---|---|
| i. 3 years for ECB upto USD 50 million or its equivalent.<br>ii. 5 years for ECB beyond USD 50 million or its equivalent.<br>iii. 5 years for eligible borrowers under Financial Lease, irrespective of the amount of borrowing.<br>iv. 5 years for Foreign Currency Convertible Bonds (FCCBs)/ Foreign Currency Exchangeable | 10 years irrespective of the amount. | Same as Track I |

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| Bonds (FCEBs) irrespective of the amount of borrowing. The call and put option, if any, for FCCBs shall not be exercisable prior to 5 years | | |

**ALL-IN-COST**

The all-in-cost requirements for the three tracks will be as under:

Track I

i. The all-in-cost ceiling is prescribed through a spread over the benchmark as under:

a. For 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.

b. For 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.

ii. Penal interest, if any, for default or breach of covenants should not be more than 2 per cent over and above the contracted rate of interest.

Track II

i. The maximum spread over the benchmark will be 500 basis points per annum.

ii. Remaining conditions will be as given under Track I.

Track III

The all-in-cost should be in line with the market conditions.

**END-USE:**

The end-use prescriptions for ECB raised under the three tracks are given in the following table:

| TRACK I | TRACK II | TRACK III |
|---|---|---|
| i. ECB proceeds can be utilised for capital expenditure in the form of:<br><br>a. Import of capital goods including payment towards import of services,<br>technical know-how and license fees, provided the same are part of these capital goods; | 1. The ECB proceeds can be used for all purposes excluding the following:<br>i. Real estate activities<br>ii. Investing in capital market<br>iii. Using the proceeds for equity investment domestically;<br>iv. On-lending to other entities with any of the above objectives;<br>v. Purchase of land | NBFCs can use ECB proceeds only for:<br>a. On-lending for any activities, including infrastructure sector as permitted by the concerned regulatory department of RBI;<br>b. providing hypothecated loans to domestic entities for |

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| b. Local sourcing of capital goods;<br>c. New projects;<br>d. Modernisation /expansion of existing units;<br>e. Overseas direct investment in Joint ventures (JV)/ Wholly owned subsidiaries (WOS);<br>f. Acquisition of shares of public sector undertakings at any stage of disinvestment under the disinvestment programme of the Government of India;<br>g. Refinancing of existing trade credit raised for import of capital goods;<br>h. Payment of capital goods already shipped / imported but unpaid;<br>i. Refinancing of existing ECB provided the residual maturity is not reduced.<br>ii. SIDBI can raise ECB only for the purpose of on-lending to the borrowers in the Micro, Small and Medium Enterprises (MSME sector),<br>iii. Units of SEZs can raise ECB only for their own requirements5.<br>iv. Shipping and airlines companies can raise ECB only for import of vessels and aircrafts respectively5.<br>v. 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.<br>vi. NBFC-IFCs and NBFCs-AFCs can raise ECB only for financing infrastructure.<br>vii. Holding Companies and CICs shall use ECB proceeds only for on- | | acquisition of capital goods/equipment; and<br>c. providing capital goods/equipment to domestic entities by way of lease and hire-purchases<br>2. Developers of SEZs/ NMIZs can raise ECB only for providing infrastructure facilities within SEZ/ NMIZ.<br>3. 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.<br>4. For other eligible entities under this track, the ECB proceeds can be used for all purposes excluding the following:<br>i. Real estate activities<br>ii. Investing in capital market<br>iii. Using the proceeds for equity investment domestically;<br>iv. On-lending to other entities with any of the above objectives;<br>v. Purchase of land |

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| lending to infrastructure Special Purpose Vehicles (SPVs).<br><br>viii. ECBs for the following purposes will be considered only under the approval route5:<br>a. Import of second hand goods as per the Director General of Foreign Trade (DGFT) guidelines;<br>b. On-lending by Exim Bank. | | |

**INDIVIDUAL LIMITS:**

The individual limits refer to the amount of ECB which can be raised in a financial year under the automatic route.
i. 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 as under:

a. Up to USD 750 million or equivalent for the companies in infrastructure and manufacturing sectors, Non-Banking Financial Companies -Infrastructure Finance Companies (NBFC-IFCs), NBFCs-Asset Finance Companies (NBFC-AFCs), Holding Companies and Core Investment Companies;

b. Up to USD 200 million or equivalent for companies in software development sector;

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.

ii. ECB proposals beyond aforesaid limits will come under the approval route.

iii. In case the ECB is raised from direct equity holder, aforesaid individual ECB limits will also be subject to ECB liability: equity ratio requirement.

iv. For ECB raised under the automatic route, the ECB liability of the borrower (including all outstanding ECBs and the proposed one) towards the foreign equity holder should not be more than four times of the equity contributed by the latter.

v. For ECB raised under the approval route, this ratio should not be more than 7:1. This ratio will not be applicable if total of all ECBs raised by an entity is up to USD 5 million or equivalent.

vii. For computation of individual limits under Track III, exchange rate prevailing on the date of agreement should be taken into account.

**CURRENCY OF BORROWING:**

ECB can be raised in any freely convertible foreign currency as well as in Indian Rupees.

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.

**HEDGING REQUIREMENTS**

Eligible borrowers shall have a board approved risk management policy and shall keep their ECB exposure hedged 100 per cent at all times.

**SECURITY for raising ECB:** AD Category I banks are permitted to allow 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, subject to satisfying themselves that:

i. the underlying ECB is in compliance with the extant ECB guidelines,

ii. there exists a security clause in the Loan Agreement requiring the ECB borrower to create charge, in favour of overseas lender / security trustee, on immovable assets / movable assets / financial securities / issuance of corporate and / or personal guarantee, and

iii. No objection certificate, as applicable, from the existing lenders in India has been obtained.

**ISSUE OF CORPORATE OR PERSONAL GUARANTEE:**

The arrangement shall be subject to the following:

i. A copy of Board Resolution for the issue of corporate guarantee for the company issuing such guarantee, specifying name of the officials authorised to execute such guarantees on behalf of the company or in individual capacity should be obtained.

ii. Specific requests from individuals to issue personal guarantee indicating details of the ECB should be obtained.

iii. Such security shall be subject to provisions contained in the Foreign Exchange Management (Guarantees) Regulations, 2000.

iv. ECB can be credit enhanced / guaranteed / insured by overseas party/ parties only if it/ they fulfil/s the criteria of recognised lender under extant ECB guidelines.

**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.

**PARKING OF ECB PROCEEDS:**

ECB proceeds are permitted to be parked abroad as well as domestically

**LOAN REGISTRATION NUMBER (LRN):**

Any draw-down in respect of an ECB as well as payment of any fees / charges for raising an ECB should happen only after obtaining the LRN from RBI. To obtain the LRN, borrowers are required to submit duly certified Form 83, 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.

**PREPAYMENT OF ECB:**

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

**REFINANCING OF EXISTING ECB:**

A designated AD Category I bank may allow refinancing of existing ECB by raising fresh ECB provided the outstanding maturity of the original borrowing is not reduced and all-in-cost of fresh ECB is lower than the existing ECB. Further, refinancing of ECBs raised under the previous ECB framework may also be permitted, subject to additionally ensuring that the borrower is eligible to raise ECB under the extant framework. Raising of fresh ECB to part refinance the existing ECB is also permitted subject to same conditions.

**BORROWING BY ENTITIES UNDER INVESTIGATION:**

All entities against which investigation / adjudication / appeal by the law enforcing agencies for violation of any of the provisions of the Regulations under FEMA pending, may raise ECBs as per the applicable norms, if they are otherwise eligible, notwithstanding the pending investigations / adjudications / appeals, without prejudice to the outcome of such investigations / adjudications / appeals. The borrowing entity shall inform about pendency of such investigation / adjudication / appeal to the AD Cat-I bank / RBI as the case may be. Accordingly, in case of all applications where the borrowing entity has indicated about the pending investigations / adjudications / appeals, the AD Category I Banks / Reserve Bank while approving the proposal shall intimate the agencies concerned by endorsing a copy of the approval letter.

**ECB FACILITY FOR LOW COST AFFORDABLE HOUSING PROJECTS**:

The terms and conditions for the ECB facility for low cost affordable housing projects are as follows:

i. For the purpose of ECB, a low cost affordable housing project is as defined in the extant foreign direct investment policy

ii. ECB proceeds shall not be utilized for acquisition of land.

iii. Developers/builders registered as companies may raise ECB for low cost affordable housing projects provided they have minimum 3 years' experience in undertaking residential projects, have good track record in terms of quality and delivery and the project and all necessary clearances from various bodies including Revenue Department with respect to land usage/environment clearance, etc., are available on record. They should also not have defaulted in any of their financial commitments to banks/ financial institutions or any other agencies and the project should not be a matter of litigation.

iv. The ECB should be swapped into Rupees for the entire maturity on fully hedged basis.

v. Housing Finance Companies (HFCs) registered with the National Housing Bank (NHB) and operating in accordance with the regulatory directions and guidelines issued by NHB are eligible to avail of ECB for financing low cost affordable housing units. The minimum Net Owned Funds (NOF) of HFCs for the past three financial years should not be less than INR 300 crore. Borrowing through ECB should be within overall borrowing limit of 16 times of their Net Owned Fund (NOF) and the net non-performing assets (NNPA) should not exceed 2.5% of the net advances. The maximum loan amount sanctioned to the individual buyer will be capped at INR 25 lakhs subject to the condition that the cost of the individual housing unit shall not exceed INR 30 lakhs.

vi. NHB is also eligible to raise ECB for financing low cost affordable housing units of individual borrowers. Further, in case, a developer of low cost affordable housing project not being able to raise ECB directly as envisaged above, National Housing Bank is permitted to avail of ECB for on-lending to such developers which satisfy the conditions prescribed to developers / builders subject to the interest rate spread set by RBI.

vii. Interest rate spread to be charged by NHB may be decided by NHB taking into account cost and other relevant factors. NHB shall ensure that interest rate spread for HFCs for on-lending to prospective owners' of individual units under the low cost affordable housing scheme is reasonable.

viii. Developers/ builders/ HFCs/ NHB will not be permitted to raise Foreign Currency Convertible Bonds (FCCBs) under this scheme.

**ECB FACILITY FOR START-UPS**:

AD Category-I banks are permitted to allow Start-Ups to raise ECB under the automatic route as per the following framework:

**Eligibility:** An entity recognised as a Startup by the Central Government as on date of raising ECB will be eligible under the facility.

**Maturity:** Minimum average maturity period will be 3 years.

**ECB Types:** The borrowing can be in form of loans or non-convertible, optionally convertible or partially convertible preference shares.

**Currency:** The borrowing should be denominated in any freely convertible currency or in Indian Rupees (INR) or a combination thereof. In case of borrowing in INR, the non-resident lender, should mobilise INR through swaps/outright sale undertaken through an AD Category-I bank in India.

**Amount:** The borrowing per Start-Up will be limited to USD 3 million or equivalent per financial year either in INR or any convertible foreign currency or a combination of both.

**All-in-cost:** Shall be mutually agreed between the borrower and the lender.

**End uses:** For any expenditure in connection with the business of the borrower.

**ISSUANCE OF RUPEE DENOMINATED BONDS OVERSEAS (MASALA BONDS)**

The framework for issuance of Rupee denominated bonds overseas enables eligible resident entities to issue only plain vanilla Rupee denominated bonds issued overseas in

Financial Action Task Force (FATF) compliant financial centres. The bonds can be either placed privately or listed on exchanges as per host country regulations.

**Available routes and limits of borrowing:** Eligible entities can issue Rupee denominated bonds overseas both under the automatic route and the approval route.

**Indian banks as eligible borrowers:** Indian banks will also be eligible to issue Rupee denominated bonds overseas.

**All-in-Cost**: The all-in-cost of borrowing by issuance of Rupee denominated bonds should be commensurate with prevailing market conditions.

**End-use**: The proceeds of the borrowing can be used for all purposes except for the following:

i. Real estate activities other than development of integrated township / affordable housing projects;

ii. Investing in capital market and using the proceeds for equity investment domestically;

iii. Activities prohibited as per the foreign direct investment guidelines;

iv. On-lending to other entities for any of the above purposes; and

v. Purchase of Land

**Exchange Rate for conversion**: The exchange rate for foreign currency – INR conversion shall be the market rate on the date of settlement for the purpose of transactions undertaken for issue and servicing of the bonds

**Hedging**: The overseas investors are eligible to hedge their exposure in Rupee through permitted derivative products with AD Category I banks in India. The 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.

**TRADE CREDIT**:

Trade Credits refer to the credits extended by the overseas supplier, bank and financial institution for maturity up to five years for imports into India. Depending on the source of finance, such trade credits include suppliers' credit or buyers' credit. Suppliers' credit relates to the credit for imports into India extended by the overseas supplier, while buyers' credit refers to loans for payment of imports into India arranged by the importer from overseas bank or financial institution. Imports should be as permissible under the extant Foreign Trade Policy of the Director General of Foreign Trade (DGFT).

**Routes and Amount of Trade Credit:** The available routes of raising Trade Credit are:

**Automatic Route:** ADs are permitted to approve trade credit for import of non-capital and capital goods up to USD 20 million or equivalent per import transaction.

**Approval Route:** The proposals involving trade credit for import of non-capital and capital goods beyond USD 20 million or equivalent per import transaction are considered by the RBI.

**Maturity:** Maturity prescriptions for trade credit are same under the automatic and approval routes. While for the non-capital goods, the maturity period is up to one year from the date of shipment or the operating cycle whichever is less, for capital goods, the maturity period is up to five year from the date of shipment. For trade credit up to five years, the ab-initio contract period should be 6 (six) months. No roll-over/extension will be permitted beyond the permissible period.

**All-In-Cost:** The all-in-cost ceiling for raising Trade Credit is 350 basis points over 6 months LIBOR (for the respective currency of credit or applicable benchmark). The all-in-cost includes arranger fee, upfront fee, management fee, handling/ processing charges, out of pocket and legal expenses, if any.

**Guarantee for Trade Credit:** AD Category I banks are permitted to issue guarantee/ Letters of Undertaking /Letters of Comfort in favour of overseas supplier, bank or financial institution up to USD 20 million per import transaction for a maximum period up to one year in case of import of non-capital goods (except gold, palladium, platinum, rhodium, silver, etc). For import of capital goods, the period of guarantee/ Letters of Credit/ Letters of Undertaking by AD can be for a maximum period up to three years. The period is reckoned from the date of shipment and the guarantee period should be co-terminus with the period of credit. Further, issuance of guarantees will be subject to prudential guidelines issued by the RBI from time to time.

**BORROWING BY RESIDENT INDIVIDUALS:**

An individual resident in India may borrow a sum not exceeding US$ 250,000/- or its equivalent from his close relative outside India, subject to the conditions that:

a. the minimum maturity period of the loan is one year;

b. the loan is free of interest; and

c. the amount of loan is received by inward remittance in free foreign exchange through normal banking channels or by debit to the NRE/FCNR account of the non-resident lender.

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