

Article



RBI ready to facilitate more foreign investments in Indian capital market

Abhirup Ghosh
abhirup@vinodkothari.com

26th October, 2016

Check at:
<http://india-financing.com/staff-publications.html>
for more write ups.

Copyright:

This write up is the property of Vinod Kothari Consultants Pvt Ltd and no part of it can be copied, reproduced or distributed in any manner.

Disclaimer:

This write up is intended to initiate academic debate on a pertinent question. It is not intended to be a professional advice and should not be relied upon for real life facts.

Article

The Reserve Bank of India notified the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Twelfth Amendment) Regulations, 2016 (Amendment) on 24th October, 2016¹. This is in furtherance to the draft circular issued by the RBI in this regard a couple of months back².

The RBI, vide this Amendment, has come up with major reforms which would boost the Indian capital market. In this write up we intend to draw the up the impact of the two changes in the foreign investment regime.

I. Investments in unlisted non convertible debt securities:

Earlier Foreign Institutional Investors (FII) and Foreign Portfolio Investors (FPI) were allowed to make investments only in listed non convertible debt securities (NCD) issued by Indian companies and unlisted NCDs securities only where the issuer is engaged in infrastructure sector. However, vide the Amendment, RBI has allowed the FIIs and FPIs to invest in both listed and unlisted NCDs issued by Indian companies, irrespective of what business the issuer is engaged in.

II. Investment in securitised debt instruments:

This is one of the much awaited moves by the RBI, which will be much appreciated by the financial sector. Earlier, the regulatory framework was not facilitating enough to allow FIIs and FPIs to invest in the securitised debt instruments issued in India. RBI, vide this Amendment has made the following insertion in the list of items in which FIIs and FPIs can invest:

(n) securitised debt instruments, including (i) any certificate or instrument issued by a special purpose vehicle (SPV) set up for securitisation of asset/s with banks, FIs or NBFCs as originators; and/or (ii) any certificate or instrument issued and listed in terms of the SEBI “Regulations on Public Offer and Listing of Securitised Debt Instruments, 2008.

On reading of the above text, it is quite clear, that FIIs/ FPIs will be able to invest in both listed and unlisted certificates/ instruments issued by SPVs set up for securitisation of assets. Here it is also important to note that the originators of the assets should be either banks, FIs or NBFCs.

Permissibility of these instruments under ECB Framework

Both of the abovementioned instruments are in the nature of debt, therefore, it becomes pertinent to understand the provisions of ECB Framework in this regard.

As per para 2.2 of the ECB Framework issued by the RBI³, funds raised by way of issuance of securitised instruments shall be treated as ECB for the purpose of RBI directions. However, a specific exception was inserted vide RBI’s notification dated 30th March, 2016, which stated that, for the term “securitised instruments”, NCDs subscribed by FPIs shall not be considered. Therefore, the provisions of the ECB Framework shall not be applicable where investments are made by the FPIs in NCDs.

¹ <http://egazette.nic.in/WriteReadData/2016/172326.pdf>

² https://rbi.org.in/Scripts/bs_viewcontent.aspx?Id=3173

³ https://www.rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=10204



Article

However, no such exception has been carved out under the ECB Framework for securitised debt instruments as yet and it is very logical to expect the regulator to make changes in the ECB Framework, otherwise the whole intent of this change will get frustrated.

Conclusion

This Amendment just only adds up to blasts of reforms in the Indian bond market and the intent of the government to facilitate the growth of the bond market is quite evident from the moves. The changes made in the Amendment will not facilitate the growth of the Indian bond market but will also draw attention of the foreign investors as a potential investment destination.

Note: [Indian Securitisation Foundation](#), an industry body had made several representations to facilitate investments by FPIs/FIIs in securitised debt instruments⁴. We worked extensively with the regulators on ushering this change and we are glad to have been of service to the structured finance industry.

⁴ <http://indiansecuritisation.com/representation.php>