RBI liberalises ECB norms

Favorably revisits norms relating to end use, all-in-costs

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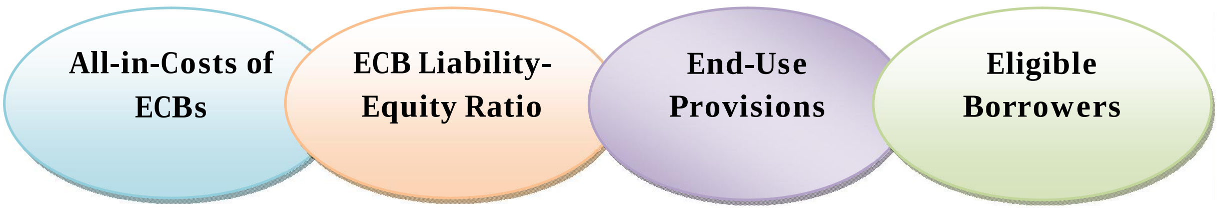
The basic objective of the extant External Commercial Borrowings (ECB) policy is to supplement domestic capital for creation of capital assets in the country, limited by considerations for capital account management. With this objective in view, the ECB regime has been progressively liberalised over the years, allowing different entities to raise ECB. There was also a report on access to overseas markets through Foreign currency borrowing, popularly known as ECB, by the Sahoo Committee, under the chairmanship of M.S Sahoo in February, 2015.

The ECB revised framework[1] , released by the Reserve Bank of India on November 30, 2015, as a means to attract flow of funds from abroad, has been highly made attune to capital account management. It seems to have taken into account the needs of the financial entities and the various macro-economic developments. This has been aimed to achieve by bringing in resident entities as eligible borrowers, recognising more entities as lenders, expanding end-uses etc.

RBI vide RBI/2017-18/169 A.P. (DIR Series) Circular No.25 dated April 27, 2018[2] further liberalised certain norms of ECB, which has been discussed in detail in this write up. The revision in the framework includes changes four major heads of the ECB framework:



[1] https://rbi.org.in/Scripts/NotificationUser.aspx?Id=10153&Mode=0
[2] https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11267&Mode=0

Revision of all-in-cost ceiling for ECB under all Tracks:

For the ECB framework, the RBI fixes an 'all-in-cost' ceiling on ECB from time to time based on the global financial market situation. The investors as well as borrowers compare the gain potential on the basis of 'all-in-cost' involved on lending/borrowing through ECB process.

'All-in-Cost' comprises of rate of interest, other fees, expenses, charges, guarantee fees whether paid in foreign currency or Indian Rupees (INR) but shall not include commitment fees, pre-payment fees / charges, withholding tax payable in INR. Further, in the case of fixed rate loans, the swap cost plus spread should be equivalent of the floating rate plus the applicable spread.

Now moving on the provisions please find below the existing and the revised provisions w.r.t all-in-cost ceiling for ECB guidelines and analysis of change brought in by the revised guidelines.

Existing Provision

Track I	**ECB with minimum average maturity of 3-5 years-** 300 basis points over 6 month LIBOR per annum
	ECB with minimum average maturity of more than 5 years- 450 basis points over 6 month LIBOR per annum
Track II	All conditions per track I except the spread which shall be 500 basis points per annum
Track III	In line with the market conditions

Revised Provision

The RBI has decided to lay down uniform all-in-cost ceiling for all the different Tracks as provided hereunder:

Track	**Ceiling**	**Basis of determination**
Track I	For all ECBs in different tracks with different maturities there shall be uniform all-in-cost ceiling of 450 basis points over the benchmark rate;	For Track I & II- 6 month USD LIBOR
Track II		
Track III		For Track III-Prevailing yield of the Government of India securities of corresponding maturity

Analysis

The amendment introduced by RBI has brought uniformity in all ECBs and Rupee denominated bonds (RDBs) by providing a single ceiling for determining costs for borrowing bonds.

There was no cost ceiling prescribed for RDBs as the cost used to be determined as per the market condition. However, pursuant to the revision RBDs also come within the ambit of the ceiling of 450 basis points.

Harmonisation of ECB Liability Equity Ratio:

Debt/equity ratio in case of foreign equity shareholders[3] means the ECB liability-equity ratio. 'ECB liability' means the proposed borrowing plus the outstanding borrowing from the concerned foreign equity holder lender and 'Equity' means paid -up capital plus free reserves (including the share premium received in foreign currency from the concerned foreign equity holder lender).

Existing Provision

- ECB raised under the automatic route: the ECB Liability to Equity ratio could extend upto 4:1; and
- ECB raised under the approval route: the ECB Liability to Equity ratio could extend upto 7:1.

The ratio requirement shall not apply where the total of all ECBs raised by an entity is up to USD 5 million or equivalent.

Revised Provision

ECB raised under the automatic route: the ECB Liability to Equity ratio could extend upto 7:1;

The ratio requirement shall not apply where the total of all ECBs raised by an entity is up to USD 5 million or equivalent.

[3] 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.

Expansion of eligible borrowers' list for the purpose of ECB

ECB framework segregates the requirements in relation to three Tracks:

ECB framework

TRACK I	TRACK II	TRACK III
Medium term foreign currency denominated ECBs with Min. Avg. Maturity (MAM) of 3/5 years	Long term foreign currency denominated ECBs with MAM of 10 years	Indian Rupee demnominated ECBs with MAM of 3/5 years.

New inclusion in list eligible under all Tracks: Housing Finance Companies, regulated by the National Housing Bank

Existing Provision

HFCs could raise ECB for low-cost affordable housing projects (till March 31, 2016). HFCs also raise ECB under Track III, as it is also a type of NBFC.

Revised Provision

HFCs can raise ECB under all three tracks. Pre-requisites prescribed for raising under Track I comprises of board approved risk management policy and 100% hedging the ECB exposure.

New inclusion in list eligible under all Tracks: Port Trusts

Existing Provision

Ports are identified as a sub-sector within the category of Transport in the harmonised list of definition of Infrastructure[4]. Accordingly, companies engaged in infrastructure sector were eligible borrowers under all three Tracks.

[4] https://rbi.org.in/Scripts/NotificationUser.aspx?Id=8591&Mode=0

Revised Provision

Ports can raise ECB under all three tracks. Pre-requisites prescribed for raising under Track I comprises of board approved risk management policy and 100% hedging the ECB exposure.

Revision in list eligible under all Tracks: Companies engaged in MRO

Existing Provision

RBI regarded 'Maintenance, Repairs and Overhaul' (MRO) as a part of airport infrastructure[5]. Accordingly, companies engaged in infrastructure sector were eligible borrowers under all three Tracks

Revised Provision

Companies engaged in the business of MRO and freight forwarding will now be permitted raise rupee denominated ECBs as under Track III of the said guidelines.

Negative list of end-use provisions for ECBs:

Existing Provision

Track I	Track II	Track III
Specific list of end use permitted was prescribed	The ECB proceeds can be used for all purposes excluding the following: i. Real estate activities ii. Investing in capital market ii. Using the proceeds for equity investment domestically; v. On-lending to other entities with any of the above objectives; v. Purchase of land	Specific list provided for NBFCs, SEZ and NMIZ developers, NBFC-MFP and other entities engaged in MFI. For other eligible entities, ECB proceeds could be used for all purposes excluding the following: i. Real estate activities ii. Investing in capital market ii. Using the proceeds for equity investment domestically; v. On-lending to other entities with any of the above objectives; v. Purchase of land

[5] https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=8668&Mode=0

Revised Provision

Track I	Track II	Track III
The companies shall not use the funds raised through ECB for the following purposes:		
a. Investment in real estate or purchase of land except when used for affordable housing as defined in Harmonised Master List of Infrastructure Sub-sectors notified by Government of India, construction and development of SEZ and industrial parks/integrated townships.		
b. Investment in capital market.		
c. Equity investment.		
d. Working capital purposes.	-	d. Working capital purposes.
e. General corporate purposes.	-	e. General corporate purposes.
f. Repayment of Rupee loans.	-	f. Repayment of Rupee loans.
g. On-lending to entities for the above activities from (a) to (f) **Note: 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.**	On-lending to entities for the above activities from (a) to (c) or working capital purposes, general corporate purposes or for repayment of rupee loans.	g. On-lending to entities for the above activities from (a) to (f) **Note: 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.**

Conclusion

The notification, which abundantly clarifies the negative list in relation to end use and other amendments are yet to be incorporated in the Master Direction. Further, the erstwhile Guidelines permitted only entities under track II to use ECB proceeds for working capital requirements and general corporate purposes. Post amendment, the entities of other two tracks i.e. Track I and III can also use ECB proceeds for working capital requirements subject to the condition that such ECB raised from the foreign equity holder or a group entity of the borrower which shall have a minimum average maturity of five years.

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