External Commercial Borrowings

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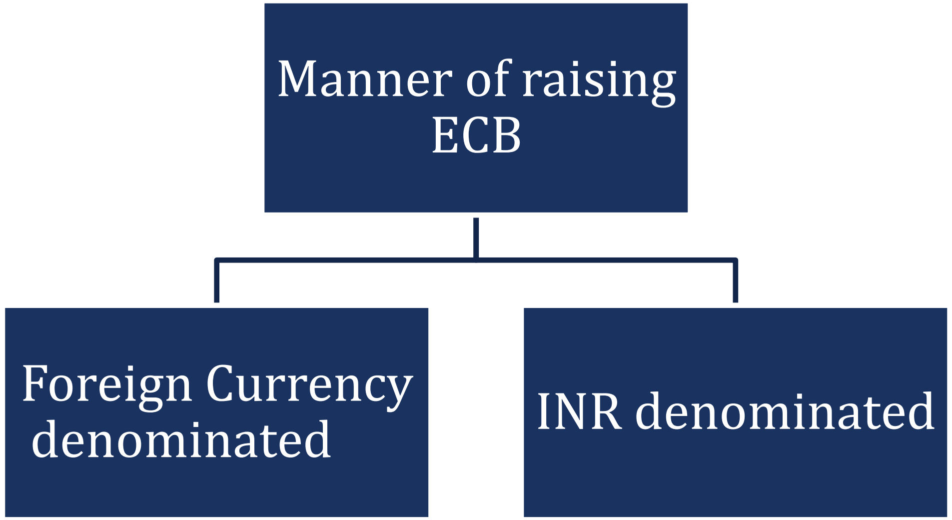
ECB – meaning, limits and regulatory framework

- What are ECBs
  - Commercial Loans
- Raised by Eligible Borrowers
- From Recognized Lenders
- For Permitted end use
- As per prescribed parameters for
    - Minimum Average Maturity
    - All in cost ceiling
- Currency
  - Any freely convertible Foreign Currency
    - USD, Euro, etc.
  - Indian Rupee (INR)
- Limits
  - under automatic route
    - up to USD 750 million or equivalent per financial year
  - Under approval route
    - Borrower to make application to RBI in Form ECB
  - Borrowing to be governed by guidelines on debt equity ratio, issued if any, by the sectoral or prudential regulator concerned.

- Regulatory framework
  - Companies Act
    - Section 42 r/w Rule 14 of PAS Rules, Rule 13 of SHA Rules
    - Section 55 r/w Rule 12 of SHA Rules
    - Section 71 r/w Rule 18 of SHA Rules
    - Sections 179, 180 and 177
  - FEMA Act read with Rules and Regulations
    - FEMA (Debt Instrument) Regulations, 2019
    - FEMA (Borrowing and Lending) Regulations, 2018
    - RBI Master Direction - External Commercial Borrowings, Trade Credits and Structured Obligations
    - RBI Master Direction –Reporting under FEMA
  - In case of Indian Banks & their branches/subsidiaries outside India
    - Lending and borrowing shall be governed by Prudential Guidelines issued by DBR of RBI
  - Other entities
    - to follow the guidelines issued, if any, by the concerned sectoral or prudential regulator
  - Exemption from being considered as ECB
    - Investments in Non-Convertible Debentures ('NCDs') in India made by Foreign Portfolio Investors ('FPIs')

Forms of ECB – 1/2

- Loans, including bank loans
- Floating/ fixed rate notes/ bonds /debentures (other than fully and compulsorily convertible);
- Trade credits* beyond 3 years;
- Foreign Currency Convertible Bonds (FCCBs)*;
- Foreign Currency Exchangeable Bonds (FCEBs)*;
- Financial Lease*.
- Plain vanilla rupee denominated bonds issued overseas



*Defined in the next slide

Forms of ECB – 2/2

- FCCB
  - Bonds denominated in foreign currency
    - Principal and interest payable in foreign currency
  - Convertible into shares of borrowing entity
    - Either in whole or part.
- FCEB
  - Bonds denominated in foreign currency
    - Principal and interest payable in foreign currency
  - Exchangeable into equity share of offered company
    - Either in whole or part.
    - Only under approval route
- Financial Lease
  - Leasing company (lessor) buys the asset from seller and leases it to lessee
    - that transfers substantially all the risks and rewards incident to ownership of an asset.
- Trade Credit
  - Credits extended by the overseas supplier, bank, financial institution and other permitted recognised lenders for imports of capital/non-capital goods permissible under the Foreign Trade Policy of the Government of India.
  - Buyers' credit
    - loans for payment of imports into India arranged by the importer from overseas bank or financial institution
  - Suppliers' credit
    - Credit granted by overseas supplier

Recognized Lenders

- Lender to be resident of FATF or IOSCO compliant country;
  - FATF compliant country
    - A country that is a member of the Financial Action Task Force (FATF) or a member of a FATF-Style Regional Body; and
    - should not be a country identified in the public statement of the FATF as
      - (i) A jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply; or
      - (ii) A jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the Financial Action Task Force to address the deficiencies.
  - IOSCO compliant country
    - A country whose securities market regulator is a signatory to the International Organisation of Securities Commission's (IOSCO's) Multilateral Memorandum of Understanding (Appendix A Signatories) or a signatory to bilateral Memorandum of Understanding with the SEBI for information sharing arrangements.
- Multilateral or regional financial institutions
  - IFC, ADB, IMF etc
- Foreign branches / subsidiaries of Indian banks
  - Only for FCY ECB except FCCBs & FCEB
  - Subject to prudential norms, can participate as
    - arrangers/underwriters/market-makers/traders for rupee denominated bonds issue overseas
      - Underwriting by such branches and subsidiaries for issuances by Indian Banks not allowed.
- Individual lenders that are foreign equity holders*

*defined in the next slide

Foreign equity holders as recognized lender

- Eligibility conditions
  - direct foreign equity holder with minimum 25% direct equity holding in the borrowing entity,
  - indirect equity holder with minimum indirect equity holding of 51%, or
  - group company with common overseas parent.
- Limit
  - in case of FCY denominated ECB raised from direct foreign equity holder, ECB liability-equity ratio for ECB raised under the automatic route cannot exceed 7:1.
    - Ratio will not be applicable if the outstanding amount of all ECB, including the proposed one, is up to USD 5 million or its equivalent.
- ECB liability - equity Ratio
  - ECB amount will include all outstanding amount of all ECB (other than INR denominated) and the proposed one (only outstanding ECB amounts in case of refinancing)
  - equity will include the paid-up capital and free reserves (including the share premium received in foreign currency) as per the latest audited balance sheet.
  - Both ECB and equity amounts will be calculated with respect to the foreign equity holder.
    - Where there is more than one foreign equity holder in the borrowing company, the portion of the share premium in foreign currency brought in by the lender(s) concerned shall only be considered for calculating the ratio.
  - The ratio will be calculated as per latest audited balance sheet.

Eligible Borrowers

- For FCY Denominated ECB
  - Entities eligible to received FDI;
  - Port trusts;
  - Units in SEZ;
  - SIDBI;
  - EXIM Bank of India.
- For INR Denominated ECB
  - Entities eligible to raise FCY ECB;
  - Registered entities engaged in micro-finance activities being:-
  - Not for profit organization;
  - Registered societies/trusts/ cooperatives;
  - Non-government organisation.

Minimum Average Maturity Period (MAMP) (1/2)

Sr.No.	Category	MAMP
(a)	ECB raised by manufacturing companies up to USD 50 million or its equivalent per financial year.	1 year
(b)	ECB raised from foreign equity holder for working capital purposes, general corporate purposes or for repayment of Rupee loans	5 years
[4](c)	ECB raised for (i) working capital purposes or general corporate purposes (ii) on-lending by NBFCs for working capital purposes or general corporate purposes	10 years
(d)	ECB raised for (i) repayment of Rupee loans availed domestically for capital expenditure (ii) on-lending by NBFCs for the same purpose	7 years
(e)	ECB raised for (i) repayment of Rupee loans availed domestically for purposes other than capital expenditure (ii) on-lending by NBFCs for the same purpose	10 years

- MAMP for ECB will be 3 years.
  - Call and put options, if any, shall not be exercisable prior to completion of minimum average maturity.
  - MAMP for specific categories
    - As given in the table
- For the categories mentioned at (b) to (e) –
  - ECB cannot be raised from foreign branches / subsidiaries of Indian banks
  - the prescribed MAMP will have to be strictly complied with under all circumstances.

Minimum Average Maturity Period (MAMP) (2/2)

ABC LTD. Loan Amount = USD 2 million

Date of drawal/ repayment (MM/DD/YYYY)	Drawal	Repayment	Balance	No. of Days** balance with the borrower	Product= (Col.4 * Col. 5)/ (Loan amount * 360)
Col. 1	Col. 2	Col. 3	Col. 4	Col. 5	Col. 6
05/11/2007	0.75		0.75	24	0.0250
06/05/2007	0.50		1.25	85	0.1476
08/31/2007	0.75		2.00	477	1.3250
12/27/2008		0.20	1.80	180	0.4500
06/27/2009		0.25	1.55	180	0.3875
12/27/2009		0.25	1.30	180	0.3250
06/27/2010		0.30	1.00	180	0.2500
12/27/2010		0.25	0.75	180	0.1875
06/27/2011		0.25	0.50	180	0.1250
12/27/2011		0.25	0.25	180	0.0625
06/27/2012		0.25	0.00		

Average Maturity= 3.2851

** Calculated by = DAYS360 (firstdate, seconddate, 360)

All in cost ceiling

- Components for ECB
  - rate of interest, other fees, expenses, charges, guarantee fees, Export Credit Agency charges
    - whether paid in foreign currency or INR
    - Excludes commitment fees and withholding tax payable in INR.
  - Issue related expenses should not exceed
    - For FCCBs, 4 per cent of the issue size and
    - For Private placement 2 per cent of the issue size
- Components for Trade Credits
  - rate of interest, other fees, expenses, charges, guarantee fees whether paid in foreign currency or INR.
    - Withholding tax payable in INR shall not be a part of all-in-cost.
- Various components of all-in-cost have to be paid by the borrower without taking recourse to the drawdown of ECB/TC,
  - ECB/TC proceeds cannot be used for payment of interest/charges.

All-in-cost ceiling per annum & Other costs

FCY Denominated	INR denominated
For existing ECBs: Benchmark rate + 550 basis points (only on account of transition from LIBOR to alternative benchmarks) **For new ECBs (on or after December 8, 2021):** Benchmark rate + 500 basis points	Benchmark rate plus 450 bps spread.
Benchmark rate means any widely accepted interbank rate or alternative reference rate (ARR) of 6-month tenor, applicable to the currency of borrowing.	Benchmark rate means prevailing yield of the Government of India securities of corresponding maturity.

Other costs:

Prepayment charge/ 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 on the outstanding principal amount and will be outside the all-in-cost ceiling.

Restrictions on End Use

- ECB proceed cannot be utilized for the following
  - Real Estate activities
    - real estate activity involving own or leased property, for buying, selling and renting of commercial and residential properties or land and also includes activities either on a fee or contract basis assigning real estate agents for intermediating in buying, selling, letting or managing real estate.
    - Excludes
      - construction/development of industrial parks/integrated townships/SEZ
      - purchase/long term leasing of industrial land as part of new project/modernization of expansion of existing units
      - any activity under 'infrastructure sector' definition.
  - Investment in capital markets, equity investment
  - Working capital purposes and General corporate purposes
    - Except where raised for the said purpose or from foreign equity holder
  - Repayment of rupee loans
    - Except where raised for the said purpose
  - On-lending for aforesaid purpose
    - Except in case of ECBs raised by NBFCs for the said purpose.

Procedure to raise ECB

- Automatic route
  - All ECB that conform to the parameters prescribed under the framework.
- Approval route
  - The borrowers to 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 RBI above certain threshold limit (refixed from time to time) would be placed before the Empowered Committee set up by RBI.
  - The Empowered Committee will have external as well as internal members and RBI will take a final decision in the cases taking into account recommendation of the Empowered Committee.

Hedging Requirement under ECB Framework

- For FCY ECB
  - As per guidelines issued by sectoral/ prudential regulator;
  - Infrastructure space cos to have Board approved risk mangt. policy;
    - Mandatory hedge 70% of their ECB exposure;
      - where MAMP is less than 5 years
  - Other operational aspects
    - Cover the principal as well as coupon through financial hedges
    - To be taken on the day the liability is created in the books of the borrower.
    - Minimum tenure of 1 year of financial hedge with periodic rollover
    - ECB should not be unhedged at any point during 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.
    - For this purpose, an ECB may be considered naturally hedged if the offsetting exposure has the maturity/cash flow within the same accounting year.
    - Any other arrangements/ structures, where revenues are indexed to foreign currency will not be considered as a natural hedge
  - INR ECB
    - Overseas investor are eligible to hedge INR exposure through permitted derivative products with AD Cat I banks in India

Infrastructure space cos

1. Companies in the infrastructure sector
   - Infrastructure sector means as per Harmonized Master List of Infrastructure sub-sectors
2. Non-Banking Finance Companies undertaking infrastructure financing,
3. Holding Companies/ Core Investment Companies undertaking infrastructure financing,
4. Housing Finance Companies regulated by National Housing Bank
5. Port Trusts (constituted under the Major Port Trusts Act, 1963 or Indian Ports Act, 1908).

Parking of ECB proceeds

- Abroad
  - Only those meant for FCY expenditure can be parked abroad pending utilization
  - Till utilization to be invested in following liquid assets:
    - deposits or Certificate of Deposit or other products offered by banks rated not less than AA (-) by Standard and Poor/Fitch IBCA or Aa3 by Moody's;
    - Treasury bills and other monetary instruments of one-year maturity having minimum rating as indicated above; and
    - deposits with foreign branches/subsidiaries of Indian banks abroad.
- Domestically
  - ECB proceeds meant for INR expenditure should be repatriated immediately
    - For credit to rupee a/c with AD Cat 1 banks in India
    - Term deposits with AD Cat 1 banks in India permitted
      - For a maximum period of 12 months cumulatively

Reporting Requirements

- Obtaining Loan Registration Number (LRN)
  - Any draw-down in respect of an ECB should happen only after obtaining the LRN from RBI.
  - 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 Cat I bank.
  - In turn, the AD Cat I bank will forward one copy to the Director, Reserve Bank of India, Department of Statistics and Information Management, External Commercial Borrowings Division, Bandra-Kurla Complex, Mumbai – 400 051 (Contact numbers 022-26572513 and 022-26573612).
  - Copies of loan agreement for raising ECB are not required to be submitted to RBI.
- Monthly reporting
  - Actual ECB transactions to be reported 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.

Late Submission Fees ('LSF')

- LSF in case of delayed reporting
  - the delay in reporting of drawdown of ECB proceeds before obtaining LRN; or
  - delay in submission of Form ECB/Form ECB 2 returns
  - By payment of LSF in accordance with Part XIII of Master Direction – Reporting under FEMA
    - [7500 + (0.025% × A × n)]
    - "n" is the number of years of delay in submission rounded-upwards to the nearest month and expressed up to 2 decimal points.
    - "A" is the amount involved in the delayed reporting.
    - LSF amount is per return. However, for any number of Form ECB-2 returns, delayed submission for each LRN will be treated as one instance for the fixed component.
    - 'A' for any ECB-2 return will be the gross inflow or outflow (including interest and other charges), whichever is more.
    - Maximum LSF amount will be limited to 100 per cent of 'A' and will be rounded upwards to the nearest hundred.
  - Option available up to three years from the due date of reporting/ submission.
  - Non-payment of LSF
    - Within 30 days of issue of payment advice, such advice shall be considered as null and void;
    - any LSF received beyond this period shall not be accepted.
    - If the applicant subsequently approaches for payment of LSF for the same delayed reporting, the date of receipt of such application shall be treated as the reference date for the purpose of calculation of "n".
  - Neither submission, nor payment of LSF
    - Person shall be liable for penal action under the provisions of FEMA, 1999.

Powers with AD Cat 1 Bank to approve requests

- Approve any requests from the borrowers for changes in respect of ECB,
  - except for FCCBs/FCEBs,
  - duly ensuring that the changed conditions comply with extant ECB norms and are with the consent of lender(s).
  - if availed from the Indian banking system, including foreign branches/subsidiaries of Indian banks, any extension of tenure of ECB (whether matured or not) shall be subject to applicable prudential guidelines issued by Department of Banking Regulation of Reserve Bank including guidelines on restructuring.
  - The changes in the terms and conditions of ECB allowed by the ADs under the powers delegated and / or changes approved by the RBI should be reported to the DSIM.
  - changes should also get reflected in the Form ECB 2 returns appropriately.

- Following can also be undertaken under the automatic route
  - Change of AD Cat I Bank
    - subject to obtaining NOC from the existing AD Category I bank;
  - Cancellation of LRN
    - subject to ensuring that no draw down against the said LRN has taken place and
    - monthly ECB-2 returns till date in respect of the allotted LRN have been submitted to DSIM
  - Re-financing of existing ECB
    - provided the outstanding maturity of the original borrowing is not reduced; and
    - all-in-cost of fresh ECB is lower than the all-in-cost of existing ECB.
    - refinancing of ECB raised under the previous ECB frameworks may also be permitted,
      - provided the borrower is eligible to raise ECB under the extant framework.
    - Indian banks are permitted to participate in refinancing of existing ECB, only for highly rated corporates (AAA) and for Maharatna/Navratna PSUs.

Conversion of ECB into equity

- The activity of the borrowing company is covered under the automatic route for FDI or Government approval is received, wherever applicable, for foreign equity participation as per extant FDI policy;
  - Conversion should not result in breach of sectoral cap.
- The conversion is with the lender's consent and without any additional cost;
- Applicable pricing guidelines for shares are complied with;
- Reporting requirements –
  - partial conversion
    - the converted portion is to be reported in Form FC-GPR prescribed for reporting of FDI flows
    - monthly reporting to DSIM in Form ECB 2 Return will be with suitable remarks, "ECB partially converted to equity".
  - full conversion
    - the entire portion is to be reported in Form FC-GPR, while reporting to DSIM in Form ECB 2 Return should be done with remarks "ECB fully converted to equity".
    - Subsequent filing of Form ECB 2 Return is not required.
  - For conversion of ECB into equity in phases
    - reporting through Form FC-GPR and Form ECB 2 Return will also be in phases.
- Consent of other lenders, if any, to the same borrower is available or atleast information regarding conversions is exchanged with other lenders of the borrower.
- For conversion of ECB dues into equity, the exchange rate prevailing on the date of the agreement between the parties concerned for such conversion or any lesser rate can be applied with a mutual agreement with the ECB lender.
- the fair value of the equity shares to be issued shall be worked out with reference to the date of conversion only.

Security for raising ECB – 1/2

- General conditions for AD Bank to ensure
  - the underlying ECB is in compliance with the extant ECB guidelines,
  - there exists a security clause in the Loan Agreement requiring the ECB borrower
    - to create/cancel charge,
    - in favour of overseas lender/security trustee,
    - on immovable assets/movable assets/financial securities/issuance of corporate and/or personal guarantee, and
    - No objection certificate, as applicable, from the existing lenders in India has been obtained in case of creation of charge.
- Creation of charge on immoveable assets
  - Such security shall be subject to provisions contained in the FEMA (NDI) Rules, 2019.
  - The permission should not be construed as a permission to acquire immovable asset (property) in India, by the overseas lender/ security trustee.
  - In the event of enforcement / invocation of the charge, the immovable asset/ property will have to be sold only to a PRII and the sale proceeds shall be repatriated to liquidate the outstanding ECB.
- Creation of Charge on Movable Assets
  - In the event of enforcement/ invocation of the charge, the claim of the lender will be restricted to the outstanding claim against the ECB.
  - Encumbered movable assets may also be taken out of the country subject to getting ‘No Objection Certificate’ from domestic lender/s, if any.

Security for raising ECB – 2/2

- Creation of Charge over Financial Securities
  - Pledge of shares of the borrowing company held by the promoters as well as in domestic associate companies of the borrower is permitted.
  - Pledge on other financial securities, viz. bonds and debentures, Government Securities, Government Savings Certificates, deposit receipts of securities and units of the Unit Trust of India or of any mutual funds, standing in the name of ECB borrower/promoter, is also permitted.
  - In addition, security interest over all current and future loan assets and all current assets including cash and cash equivalents, including Rupee accounts of the borrower with ADs in India, standing in the name of the borrower/promoter, can be used as security for ECB. The Rupee accounts of the borrower/promoter can also be in the form of escrow arrangement or debt service reserve account.
  - In case of invocation of pledge, transfer of financial securities shall be in accordance with the extant FDI/FII policy including provisions relating to sectoral cap and pricing as applicable read with FEMA (NDI) Rules, 2019.
- Issue of Corporate or Personal Guarantee:
  - 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.
  - Specific requests from individuals to issue personal guarantee indicating details of the ECB should be obtained.
  - Such security shall be subject to provisions contained in the Foreign Exchange Management (Guarantees) Regulations, 2000, as amended from time to time.
  - 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.

ECB for Start-ups under automatic route (1/2)

- Eligibility:
  - An entity recognized as a Startup by the Central Government as on date of raising ECB.
  - Other start-ups which do not comply with the aforesaid definition but are eligible to receive FDI, can also raise ECB under the general ECB route/framework.
- Maturity: Minimum average maturity period will be 3 years.
- Recognized lender: Lender / investor shall be a resident of a FATF compliant country.
  - However, foreign branches/subsidiaries of Indian banks and
  - overseas entity in which Indian entity has made overseas direct investment as per the extant Overseas Direct Investment Policy
  - will not be considered as recognised lenders under this framework.
- Forms: The borrowing can be in form of loans or non-convertible, optionally convertible or partially convertible preference shares.
- Amount: USD 3 million or equivalent per financial year per Start-up
  - 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.
- Conversion into equity: Conversion into equity is freely permitted subject to Regulations applicable for foreign investment in Startups.

ECB for Start-ups under automatic route (2/2)

- Security: The choice of security to be provided to the lender is left to the borrowing entity.
  - Security can be in the nature of movable, immovable, intangible assets (including patents, intellectual property rights), financial securities, etc. and shall comply with foreign direct investment / foreign portfolio investment / or any other norms applicable for foreign lenders / entities holding such securities.
  - Further, issuance of corporate or personal guarantee is allowed.
  - Guarantee issued by a non-resident(s) is allowed only if such parties qualify as lender under ECB for Startups.
  - Issuance of guarantee, standby letter of credit, letter of undertaking or letter of comfort by Indian banks, all India Financial Institutions and NBFCs is not permitted.
- Hedging: The overseas lender, in case of INR denominated ECB, will be eligible to hedge its INR exposure through permitted derivative products with AD Category – I banks in India. The lender can also access the domestic market through branches/ subsidiaries of Indian banks abroad or branches of foreign bank with Indian presence on a back to back basis.
  - Startups raising ECB in foreign currency advised to ensure that they have an appropriate risk management policy to manage potential risk arising out of ECB.
- Conversion rate: In case of borrowing in INR, the foreign currency - INR conversion will be at the market rate as on the date of agreement.
- Other Provisions:
  - Other provisions like parking of ECB proceeds, reporting arrangements, powers delegated to AD banks, borrowing by entities under investigation, conversion of ECB into equity will be as included in the ECB framework.
  - However, provisions on leverage ratio and ECB liability: Equity ratio will not be applicable.

ECB raised by certain Entities

- Under Restructuring
  - An entity which is under a restructuring scheme/ CIRP can raise ECB
    - only if specifically permitted under the resolution plan.
  - Loans under any one time settlement with lenders
    - By Eligible corporate borrowers who have availed Rupee loans domestically for capital expenditure in manufacturing and infrastructure sector and which have been classified as SMA-2 or NPA.
  - Lender banks are also permitted to sell, through assignment, such loans to eligible ECB lenders,
    - Provided, the resultant external commercial borrowing complies with all-in-cost, minimum average maturity period and other relevant norms of the ECB framework.
    - Foreign branches/ overseas subsidiaries of Indian banks are not eligible to lend for the above purposes.
  - The applicable MAMP will have to be strictly complied with under all circumstances.
  - Eligible borrowers participating in the CIRP as resolution applicants, can raise ECB from all recognized lenders, for repayment of Rupee term loans of the target company
    - except foreign branches/subsidiaries of Indian banks.
    - Such ECB will be considered under the approval route.

- Under Investigation
  - Eligible to raise ECB, it they are otherwise eligible;
    - Without prejudice to the outcome of such investigation/ adjudication/ appeal
  - The borrowing entity shall inform about pendency of such investigation / adjudication / appeal to the AD Cat-I bank / RBI
    - the AD Cat I Banks / Reserve Bank while approving the proposal shall intimate the agencies concerned by endorsing a copy of the approval letter.

Conditions for Guarantee by non-residents

- For Rupee facility which is
  - either fund based; or
  - non-fund based (such as letter of credit / guarantee / letter of undertaking / letter of comfort); or
  - is in the form of derivative contract by residents that are subsidiaries of MNCs
- No transaction involving foreign exchange until the guarantee is invoked and the non-resident guarantor is required to meet the liability under the guarantee.
- The non-resident guarantor may discharge the liability by:
  - payment out of rupee balances held in India; or
  - by remitting the funds to India; or
  - by debit to his FCNR(B)/NRE account maintained with an AD bank in India.
- In such cases, the non-resident guarantor may enforce his claim against the resident borrower to recover the amount and on recovery may seek repatriation of the amount if the liability is discharged,
  - either by inward remittance or
  - by debit to FCNR(B)/NRE account.
  - In case the liability is discharged by payment out of Rupee balances, the amount recovered can be credited to the NRO account of the non-resident guarantor.
- General Permission is available to a resident, being a principal debtor to make payment to a PROI, who has met the liability under a guarantee.
  - the amount remitted/credited shall not exceed the rupee equivalent of the amount paid by the non-resident guarantor against the invoked guarantee.

Credit Enhancement (CE) by non-resident

- Eligible persons to provide CE
  - Multilateral financial institutions (such as, IFC, ADB, etc.);
  - Regional financial institutions; and
  - Government owned (either wholly or partially) financial institutions;
  - direct/ indirect equity holder
- Eligible borrowings on which CE permitted
  - domestic debt raised through issue of capital market instruments, such as Rupee denominated bonds and debentures
- Conditions for CE
  - The underlying debt instrument should have a minimum average maturity of three years;
    - Prepayment and call/ put options not permissible during those 3 years ;
  - Guarantee fee and other costs in connection with credit enhancement will be restricted to a maximum 2 per cent of the principal amount involved;
  - On invocation of the CE, if the guarantor meets the liability and if the same is permissible to be repaid in foreign currency
    - the all-in-cost ceilings, as applicable to the relevant maturity period of the TC/ECB will apply to the novated loan.
- In case of default and if the loan is serviced in Indian Rupees, the applicable rate of interest would be the
    - coupon of the bonds or
    - 250 bps over the prevailing secondary market yield of 5 years S-Sec, as on the date of novation,
    - whichever is higher;
- The reporting arrangements as applicable to the ECB would be applicable to the novated loans.

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