



VINOD KOTHARI & COMPANY
KOLKATA | MUMBAI | NEW DELHI | BENGALURU

EXTERNAL COMMERCIAL BORROWING

A viable source of finance for corporate

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Agenda

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Definition

External Commercial Borrowing are

- *commercial loan*
- *raised by eligible entities*
- *from recognized lenders*

and which should conform to parameters prescribed by the RBI in this regard



Motivation for issuance

For Borrower

Lower rate of interest

Availability of larger market

Reducing reliance on domestic sources

Increase in profitability of business

For Economy

Bring foreign funds into India

Could be Instrumental in sectoral growth

Increases forex reserves

Legal framework

Foreign Exchange Management Act, 1999

RBI Master Direction – External Commercial Borrowing, Trade Credits and Structured Obligations year dated June 26, 2019

FEMA (Borrowing and Lending) Regulations, 2018

FEMA (Debt Instrument) Regulations, 2019

RBI Master Direction – Reporting under FEMA

Currency of borrowing!

Foreign currency denominated ECB (FCY denominated ECB)

Any freely convertible foreign
currency

- *Investment in overseas JV, foreign
collaboration*

Indian currency denominated ECB (INR denominated ECB)

Indian rupee

- *Investment within India say purchase
of machinery from a resident*

Forms of ECB

FCY denominated ECB

Loan (including bank loan)

Floating/fixed rate notes/bonds/debenture
(other than fully and compulsory convertible instruments)

Trade credit (beyond 3 years)

FCCB & FCEB

Financial lease

INR denominated ECB

Loan (including bank loan)

Floating/fixed rate
notes/bonds/debenture/**preference shares** (other
than fully and compulsory convertible instruments)

Trade credit (beyond 3 years)

Financial lease

Plain vanilla rupee denominated bonds issued
overseas which can be either placed privately or
listed on exchanges as per host country regulations.

What is Trade Credit and Plain Vanilla Bonds?

Trade Credit

- credits extended by the
 - overseas supplier, bank
 - financial institution
 - other permitted recognized lenders
 - Buyer's credit (loan arranged by buyer himself) – Banks, financial institutions, foreign equity holder(s) located outside India and financial institutions in IFSCs located in India
 - Supplier's credit (credit sale) - Supplier of credit outside India
- for imports of capital/non-capital goods permissible under the Foreign Trade Policy

Plain Vanilla Bond

- A plain vanilla bond is market jargon to describe a standard bond i.e. an interest-bearing security paying coupons at regular intervals with a stated fixed maturity.
- In other words, a plain vanilla bond has no embedded options or structured elements

Who is an Eligible Borrower?

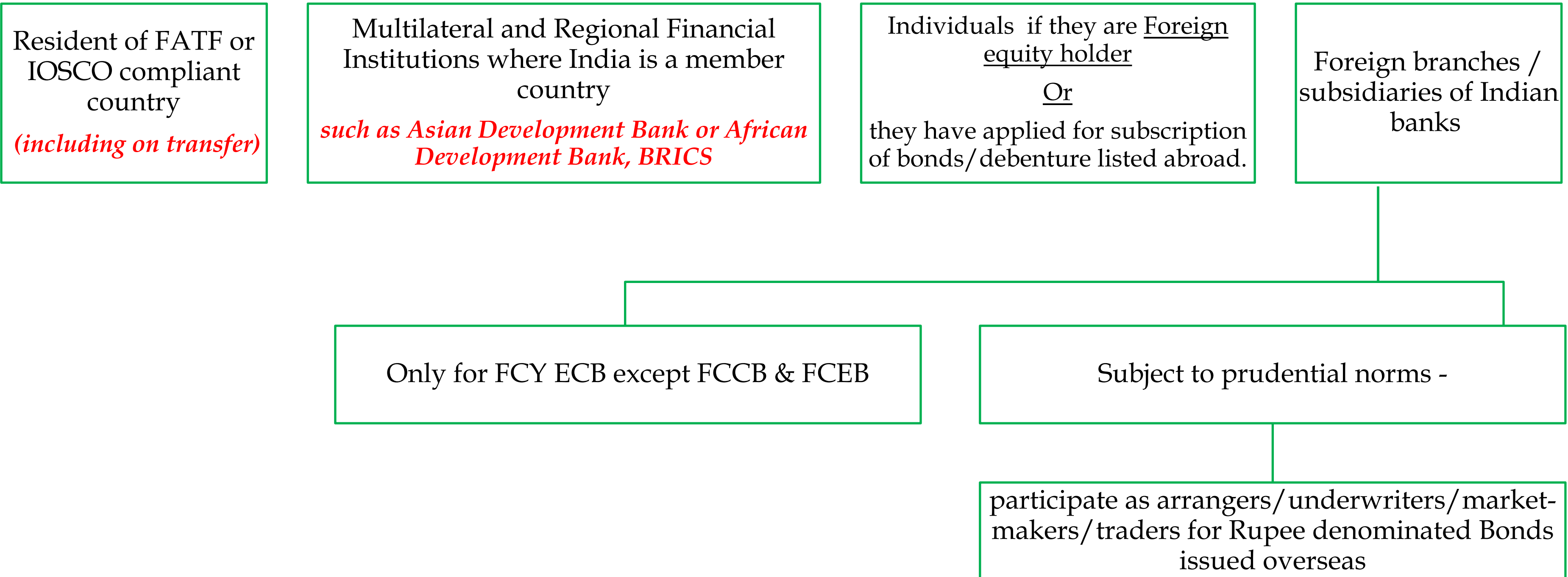
Foreign Currency Denominated ECB

- All entities eligible to receive FDI *such as Indian Companies,*
- Port Trusts
- EXIM bank of India
- Units in SEZ
- SIDBI (*Small Industrial Bank of India*)

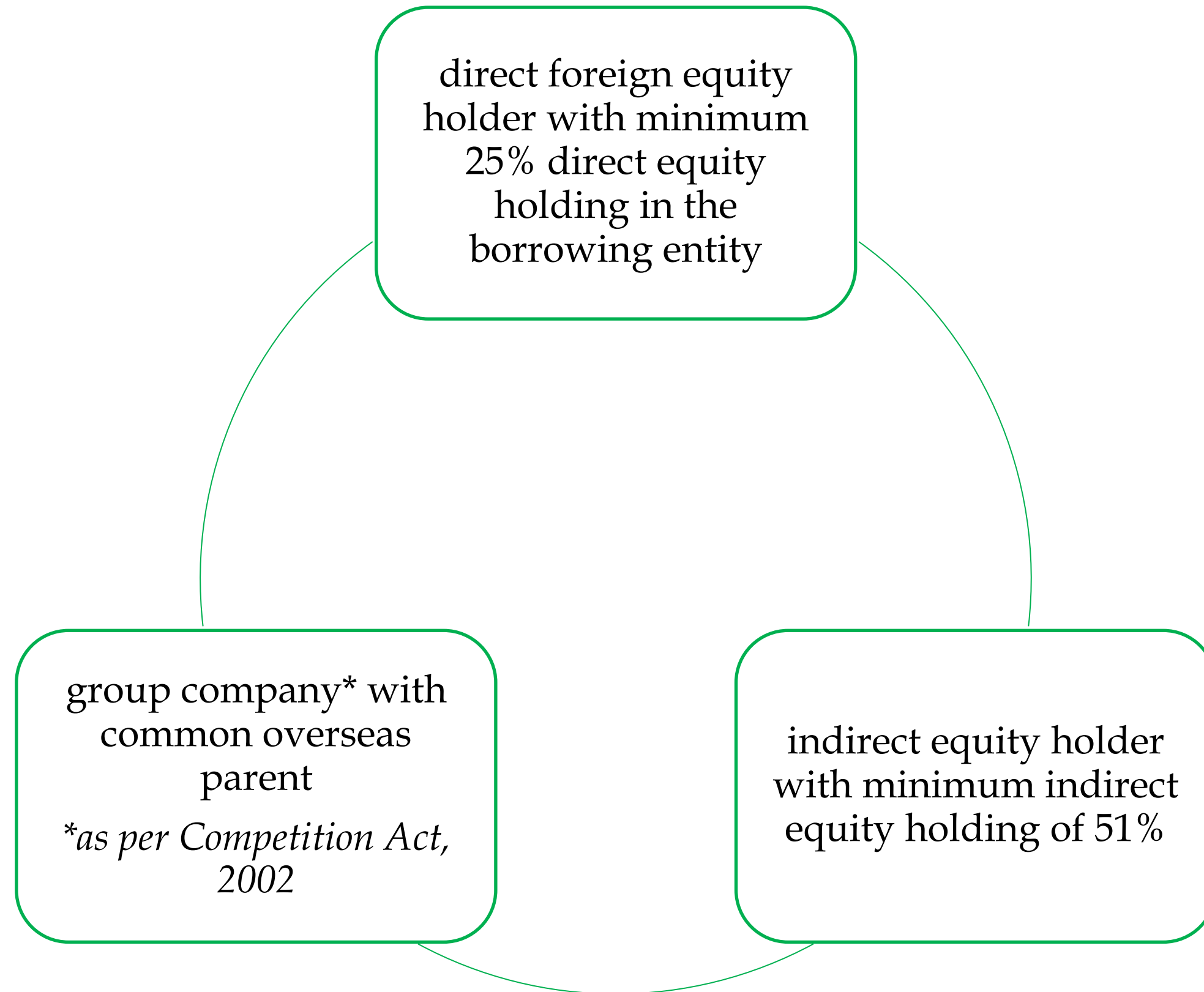
Indian Currency Denominated ECB

- All entities eligible to raise FCY ECB
- Registered entities engaged in microfinance activities, viz.,
- Registered Not for Profit companies
- Registered societies/trusts/ cooperatives
- Non-Government Organizations.

Who is a Recognized Lender?



Foreign Equity Holder



FATF & IOSCO compliant country

FATF compliant country is a country

- that is a member of
 - Financial Action Task Force (FATF)
 - FATF-Style Regional Body
- should not be a country identified in the public statement of the FATF as
 - A jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply
 - 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 is a country whose securities market regulator is a signatory

- to the IOSCO's Multilateral Memorandum of Understanding (Appendix A Signatories)
- bilateral Memorandum of Understanding with the SEBI for information sharing arrangements

Parameters prescribed by RBI in context of ECB

1. Minimum Average Maturity Period

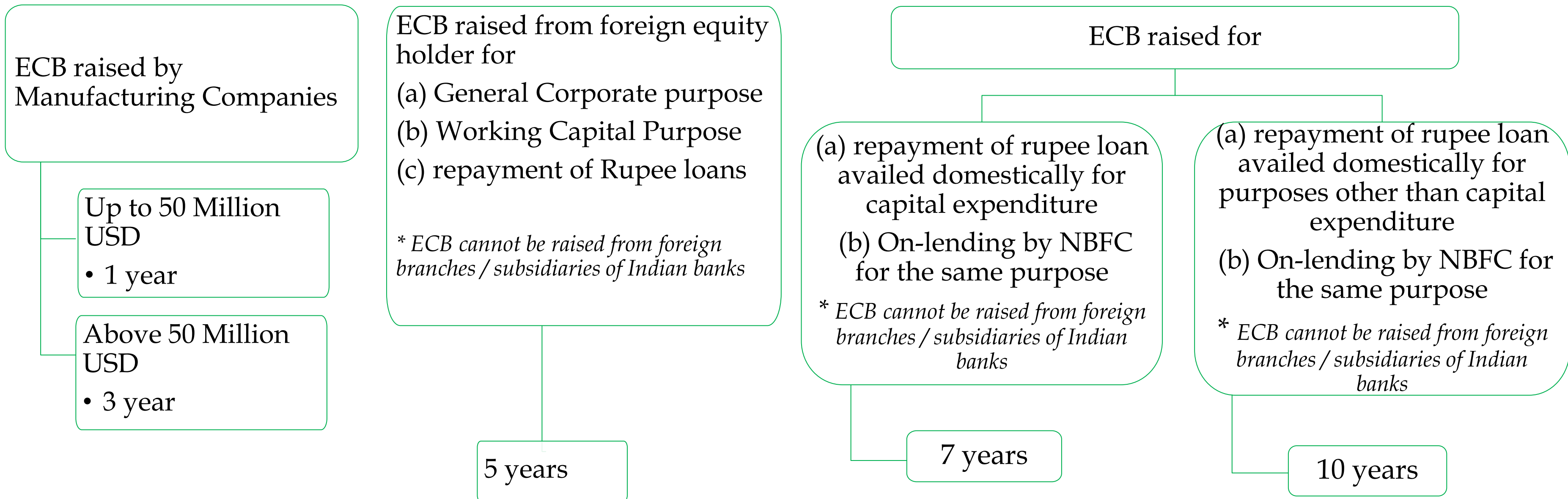
2. End use negative list

3. All-in-cost ceiling

4. Hedging Provisions

Minimum Average Maturity Period

MAMP for ECB will be 3 years. Call and put options, if any, shall not be exercisable prior to completion of minimum average maturity



Calculation of Average Maturity- An Illustration

ABC LTD.

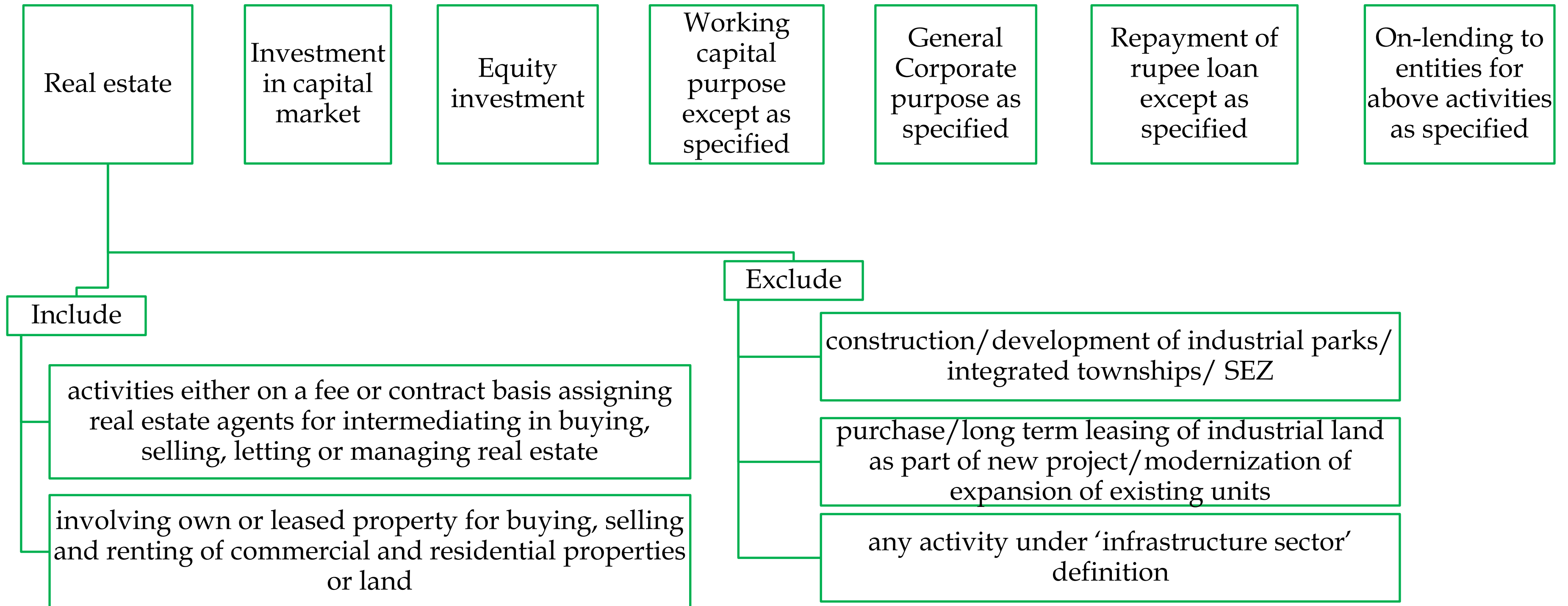
Loan Amount = USD 2 million

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		

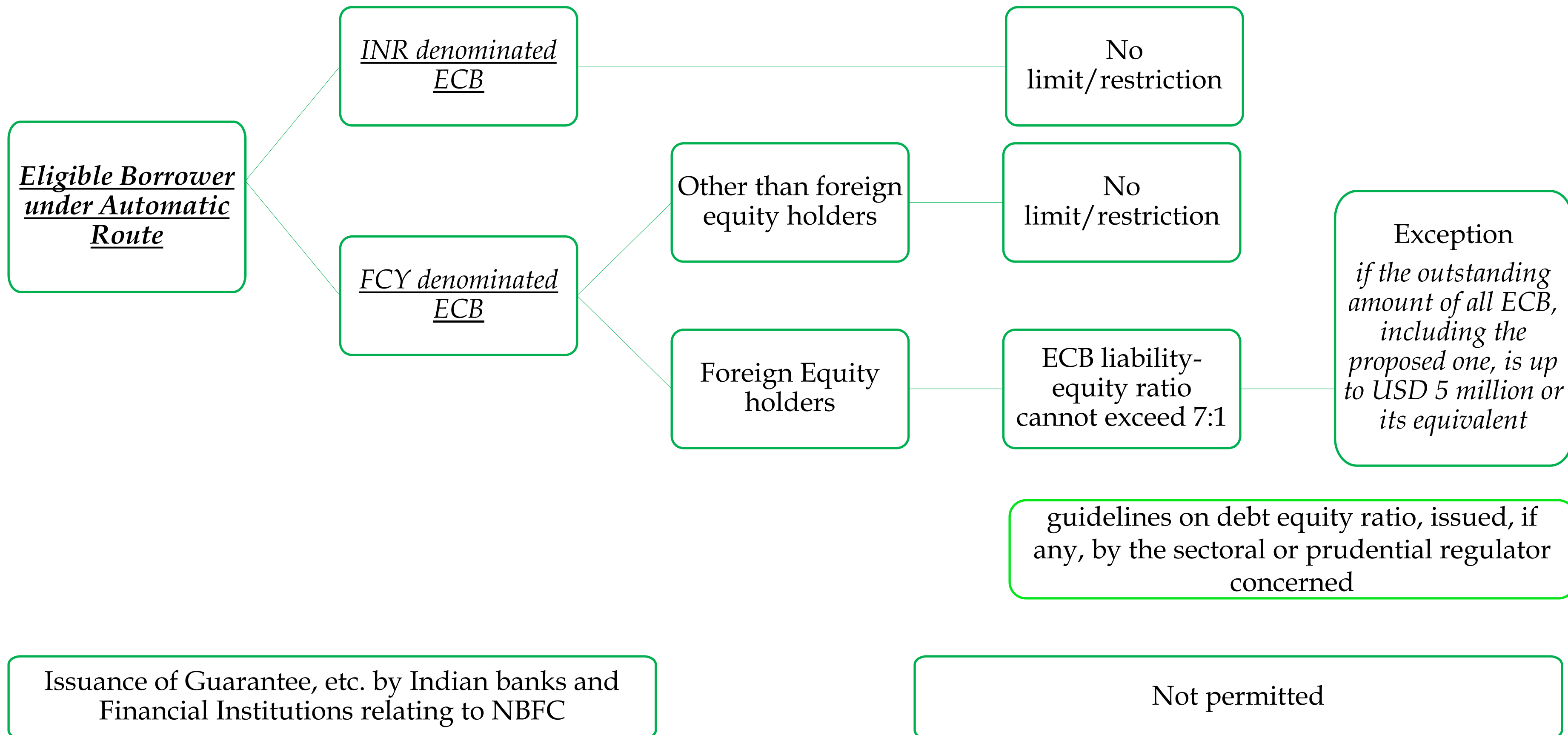
Average Maturity= 3.2851

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

End use negative list



Limit and Leverage



Issuance of Guarantee, etc. by Indian banks and Financial Institutions relating to NBFC

Not permitted

Calculation of ECB Liability-Equity ratio

ECB amount will include

- all outstanding amount of all ECB (other than INR denominated)
- proposed one (only outstanding ECB amounts in case of refinancing)

Equity will include

- paid-up capital
- and free reserves (including the share premium received in foreign currency)

Both ECB and equity amounts will be calculated with respect to the foreign equity holder

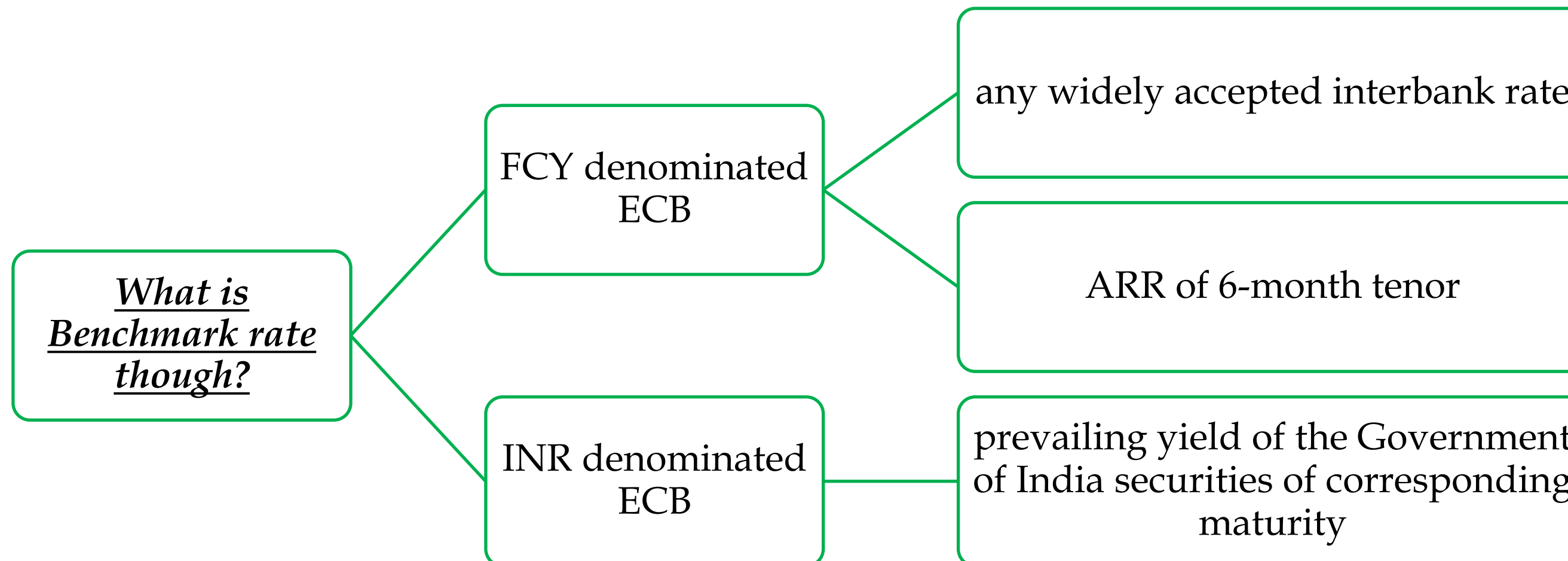
All-in-cost ceiling

FCY denominated ECB

Benchmark rate plus 500 bps spread

INR denominated ECB

Benchmark rate plus 450 bps spread



All-in-cost ceiling

Includes

Rate of Interest

Other fees

Hedging fees, underwriting fee etc

Expenses

For documentation etc

ECA charges

Guarantee fees

Excludes

Withholding tax payable in INR

Commitment fee

Other cost

Prepayment charges

Penal Interest
(Default/breach of covenant)

should not be more than 2 per cent over and above the contracted rate of interest on the outstanding principal amount

Issue related expense

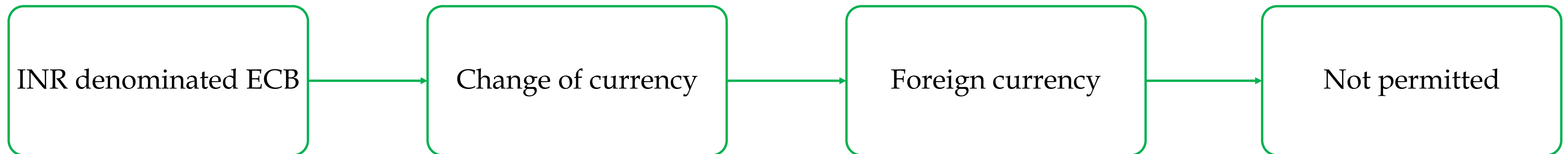
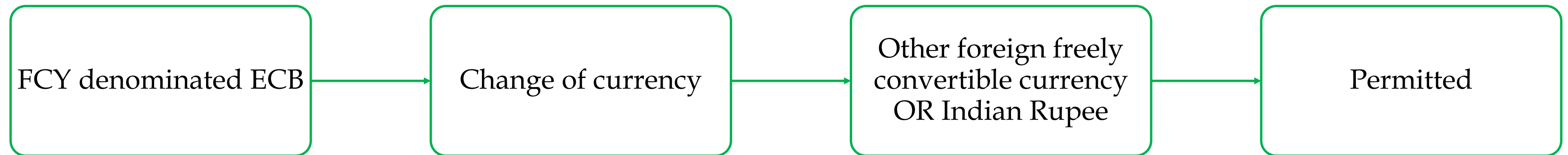
In case of FCCB

- should not exceed 4 per cent of the issue size

In case of private placement

- should not exceed 2 per cent of the issue size

Changes in currency of borrowing



Procedure for raising ECB

Under Automatic Route

Eligible Borrower

Application in FORM ECB

AD Category 1 Bank

Under Approval Route

Eligible Borrower

Application in FORM ECB

AD Category 1 Bank

Empowered Committee

Provide recommendation to
RBI

Forward the form

Sends a copy of application
from received

RBI

Routes for procuring ECB

Automatic Route

All eligible borrowers can raise ECB up to USD 750 million or equivalent per financial year

Approval Route

As per approval obtained

Parking of ECB proceeds

Parking of ECB proceeds abroad

ECB proceeds meant only for foreign currency expenditure can be parked abroad pending utilization. Till utilization, these funds can be invested in the following liquid assets

deposits or Certificate of Deposit or other products offered by banks

AA (-) by Standard and Poor/Fitch IBCA

Aa3 by Moody's

Treasury bills and other monetary instruments of one-year maturity

AA (-) by Standard and Poor/Fitch IBCA

Aa3 by Moody's

deposits with foreign branches/subsidiaries of Indian banks abroad

Term deposits with AD Category I banks in India

Parking of ECB proceeds in India should be repatriated immediately for credit

Account deposit with AD category I bank

Hedging Provision

FCY denominated ECB

Coverage

- Both principal amount as well interest
- Should start from the day liability is created in the books of borrower

Tenure and Rollover

- Minimum tenure of 1 year for the financial hedge would be required
- ECB should not be unhedged at any point of time
- Periodic rollover is allowed

INR denominated ECB

Overseas investor are eligible to hedge INR exposure through permitted derivatives products with AD Category I banks in India

Security for raising ECB

AD Category I banks are permitted to allow creation/cancellation of charge, subject to satisfying themselves that:

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

No objection certificate, as applicable, from the existing lenders in India has been obtained in case of creation of charge

Creation of charge on Immovable property

Such security shall be subject to provisions contained in the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2017

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 person resident in India and*
- *the sale proceeds shall be repatriated to liquidate the outstanding ECB.*

Creation of charge on Movable property

In the event of enforcement/ invocation of the charge: the claim of the lender, whether the lender takes over the movable asset or otherwise, will be restricted to the outstanding claim against the ECB

In the event of enforcement/ invocation of the charge: the claim of the lender, whether the lender takes over the movable asset or otherwise, will be restricted to the outstanding claim against the ECB

Creation of charge on 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

security interest over all current and future loan assets and all current assets, standing in the name of the borrower/promoter, can be used as security for ECB

In case of invocation of pledge, transfer of financial securities shall be in accordance with the extant FDI/FII policy

Conversion of ECB into Equity

Conversion of ECB, including those which are matured but unpaid, into equity is permitted subject to the following conditions

Activity of the borrowing company is covered under the automatic route for FDI or Government approval is received

Conversion should be with

- Lender's consent
- Without any additional cost
- should not result in contravention of eligibility and breach of applicable sector cap on the foreign equity holding under FDI policy

Compliance with prudential norms including guidelines on restructuring - If the borrower concerned has availed of other credit facilities

- Indian banking system, including
- foreign branches/subsidiaries of Indian banks

Consent of other lenders is available

Rate of conversion could be

- exchange rate prevailing on the date of the agreement
- Any lesser rate can be applied with a mutual agreement

Compliance with applicable pricing guidelines

Reporting requirement in case of conversion of ECB into Equity

Conversion could be either partial or full

For partial conversion

- 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, viz., "ECB partially converted to equity"

For full conversion

- 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

Reporting requirements

¹⁰³Part XIII: Late Submission Fee (LSF) Matrix for Reporting Delays, wherever applicable

1. A person who is liable to pay LSF as per the provisions under FEMA 1999, shall pay such LSF as per the following matrix:

Sr. No.	Type of Reporting delays	LSF Amount (INR)
1	Form ODI Part-II/ APR, FCGPR (B), FLA Returns, Form OPI, evidence of investment or any other return which does not capture flows or any other periodical reporting	7500
2	FC-GPR, FCTRS, Form ESOP, Form LLP(I), Form LLP(II), Form CN, Form DI, Form InVi, Form ODI-Part I, Form ODI-Part III, Form FC, Form ECB, Form ECB-2, Revised Form ECB or any other return which captures flows or returns which capture reporting of non-fund transactions or any other transactional reporting	[7500 + (0.025% × A × n)]

- a) "n" is the number of years of delay in submission rounded-upwards to the nearest month and expressed up to 2 decimal points.
- b) "A" is the amount involved in the delayed reporting.
- c) 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. Further, 'A' for any ECB-2 return will be the gross inflow or outflow (including interest and other charges), whichever is more.
- d) Maximum LSF amount will be limited to 100 per cent of 'A' and will be rounded upwards to the nearest hundred.
- e) Where an advice has been issued for payment of LSF and such LSF is not paid within 30 days, such advice shall be considered as null and void and 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".

Thankyou!