Primer

Primer on External Commercial Borrowings (ECBs)

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1. How does ECB compare with domestic borrowings in terms of costs?

- The evaluation of cost of domestic borrowings versus ECBs must be done after a careful comparison of the ECB cost, adding together the cost of hedge or the cost due to foreign exchange losses. The decision primarily depends on the prevailing interest rate gaps – INR loans and forex loans. There are situations when the gap is quite large, and even after considering the cost of hedge, an ECB may make sense. However, ECB option is not necessarily cheaper. Hence, please do consult your financial advisors to advise you on the cost comparison.

- If you leave ECB costs unhedged, you may be taking a substantial risk on forex losses. There is a currency risk involved in ECBs. A depreciating rupee will prove burdensome at the time of repayment of loan. Unless you have a natural hedge, there may be periods where this may cause a significant strain on your financials.

2. What is the key difference between ECB and FDI?

Parameters	ECB	FDI
Meaning	ECBs are commercial loans availed of by Eligible borrowers from eligible lenders, as stipulated in the RBI Master Circular on External Commercial Borrowings and trade credits, issued from time to time, with a minimum average maturity of 3 years.	FDI' means investment by non-resident entity/ person resident outside India in the capital of an Indian company under Schedule 1 of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations 2000
Governed by	Foreign Exchange Management Act, 1999 & Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, dated May 3, 2000, as amended from time to time	Consolidated FDI Policy, 2012 and Foreign Exchange Management Act, 1999 & Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations 2000 dated May 3, 2000 as amended from time to time.
End-use restrictions	Refer Question No. 5	In case of Issue of shares by Indian Companies under FCCB/ADR/GDRs there is a ban on deployment/investment of

		such funds in real estate or the stock market.
Instruments	Refer Question No. 3	Equity shares, fully, compulsorily and mandatorily convertible debentures and fully, compulsorily and mandatorily convertible preference shares.

3. What all instruments of borrowings /debt instruments are covered by the definition of "ECBs"?

- Commercial loans in the form of bank loans, buyers' credit[1], suppliers' credit[2], securitized instruments.
- Foreign Currency Convertible Bonds
- Non- convertible, optionally convertible or partially convertible Preference Shares.
- Foreign Currency Exchangeable Bond.[3]

4. What is the key difference between automatic route and approval route for ECBs?

- **Automatic Route** applies to the Borrowings made by a person resident in India in accordance with the provisions of the Automatic Route Scheme as specified in Schedule I of the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 as amended from time to time.
- **Approval Route** applies to the foreign currency loans raised of the nature or for the purposes as specified in Schedule II of the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 as amended from time to time by the person resident in India and who satisfies the eligibility and other conditions specified in that Schedule.

[1] Buyer's Credit refers to loans for payment of imports in to India arranged by the importer from a bank or financial institution for original maturity of minimum three years.

[2] Supplier's Credit refers to credit for imports into India extended by the overseas supplier.

[3] means a bond expressed in foreign currency issued by an Issuing Company and subscribed to by a person who is a resident outside India, in foreign currency and exchangeable into equity share of another company, to be called the Offered Company. The principal and interest of the FCEB is payable in foreign currency. The FCEB may be denominated in any freely convertible foreign currency.

5. What are the End-use restrictions in case of ECB?

End-uses not permitted under	
Automatic Route	**Approval Route**
(a) For on-lending or investment in capital market or acquiring a company (or a part thereof) in India by a corporate [investment in Special Purpose Vehicles (SPVs), Money Market Mutual Funds (MMMFs), etc., are also considered as investment in capital markets].	(a) For on-lending or investment in capital market or acquiring a company (or a part thereof) in India by a corporate except Infrastructure Finance Companies (IFCs), Exim Banks, Banks and financial institutions which had participated in the textile or steel sector restructuring package and NBFC-IFCs.
(b) for real estate sector,	(b) For real estate.
(c) for working capital, general corporate purpose and repayment of existing Rupee loans.	(c) For working capital and general corporate purpose and repayment of existing Rupee loans. For exceptions refer Question No. 6 and 8

6. Is ECB allowed for working capital or general corporate purposes?

- As per the restrictions imposed under "End-uses not permitted" in the Master Circular, ECB shall not be utilised for working capital and general corporate purposes.
- However, **Civil Aviation sector** is allowed to obtain ECB for working capital, subject to the approval from the Reserve Bank of India. The maximum ECB permissible to be used for working capital is equal to the overall ECB ceiling, being **USD one billion** for the entire civil aviation sector and **USD 300 million** for an individual airline company. However, the borrowing is subject to the restriction that such ECB liability needs to be extinguished only out of the foreign exchange earnings of the borrowing company.
- Airline companies registered under the Companies Act, 1956 and possessing scheduled operator permit license from DGCA (Director General for Civil Aviation) for passenger transportation are eligible to avail ECB for working capital, with a minimum average maturity of 3 years, depending on their cash flow, foreign exchange earnings and the capability to service the debt.

7. **Is ECB allowed for capital expenditure?**
   - ECB is allowed for capital expenditure such as import of capital goods (as classified by DGFT in the Foreign Trade Policy), new projects, modernization/expansion of existing production units] in real sector - industrial sector including small and medium enterprises (SME), infrastructure sector and specified service sectors, namely, hotel, hospital, software in India.
   - ECB can also be obtained for Maintenance and operations of toll systems for roads and highways for capital expenditure provided they form part of the original project.

8. **Can ECB be availed for repaying rupee loans taken by the company?**
   - ECB availed under Automatic Route cannot be utilised for repayment of existing rupee loans. However, as per *A.P. (Dir Series) Circular No. 54 dated November 26, 2012*, successful bidders making the upfront payment for the award of 2G spectrum initially out of Rupee loans availed of from the domestic lenders can refinance such rupee loans with a long-term ECB, under the Automatic Route subject to following conditions:
     - the long term ECB shall be raised within a period of 18 months from the date of sanction of such Rupee loans for the stated purpose from the domestic lenders.
     - the designated AD Category I bank has evidenced the payment of upfront fees to GoI in the form of a receipt/challan from DoT; and
     - the designated AD - Category I bank shall monitor the end-use of funds.
   - However, **eligible borrowers in the Telecom Sector** who are successful bidders for spectrum allocation may avail rupee loan initially to make the payment and may refinance the same with a long-term ECB, subject to approval from the Reserve Bank of India and fulfilment of following conditions:
     - The ECB should be raised within 12 months from the date of payment of the final installment to the Government;
     - The end-use of funds should be monitored by the designated AD-Category I bank.
     - No guarantee in any form will be given by the Banks in India.
     - The borrower needs to comply with all other conditions relating to eligible borrowers, recognized lenders, all-in-cost etc.

- Further, **Indian Companies in the infrastructure sector (except companies in the power sector)** are permitted to utilise 25% of the fresh ECB raised by them, towards refinancing of the Rupee loans availed from the domestic banking system subject to the approval of the Reserve Bank of India and fulfilment of following conditions:
    - Atleast 75% of the fresh ECB proposed to be raised should be utilised for capital expenditure towards new infrastructure project(s)
    - In respect of the remaining 25%, the refinance needs to be utilized only for repayment of the Rupee loan availed for 'capital expenditure' of earlier completed infrastructure project(s); and
    - The refinance needs to be utilised only for the Rupee loans which are outstanding in the books of the financing bank concerned.
- **Infrastructure sector is defined as** (i) power (ii) telecommunication (iii) railways (iv) roads including bridges (v) sea port and airport (vi) industrial parks (vii) urban infrastructure (water supply, sanitation and sewage projects) (viii) mining, exploration and refining and (ix) cold storage or cold room facility, including for farm level pre-cooling, for preservation or storage of agricultural and allied produce, marine products and meat.
- **Companies in the power sector** are permitted to utilize up to 40% of fresh ECB raised by them towards refinancing of the Rupee loan/s availed from the domestic banking system subject to approval of the Reserve Bank of India and fulfilment of the condition that atleast 60% of the fresh ECB proposed to be raised should be utilized for fresh capital expenditure for infrastructure project(s).
- **Indian Companies in the manufacturing and infrastructure sector and** *as per A.P. (DIR Series) Circular No.78 dated January 21, 2013*, **Indian Companies in the hotel sector (with a total project cost of INR 250 crore or more)** who are consistent foreign exchange earners during the past three financial years and not in default list/caution list of the Reserve Bank of India can avail of ECBs**, subject to overall limit of USD 10 billion** and approval of the Reserve Bank of India, for repayment of rupee loans availed of for capital expenditure from the domestic banking systems which are still outstanding and/or fresh Rupee capital expenditure. The maximum permissible ECB that can be availed of by an individual company will be limited to 50% of the average annual export earnings realised during past 3 financial years. However, the borrowing is subject to the restriction that such ECB liability needs to be extinguished only out of the foreign exchange earnings of the borrowing company.

9. Is it only that Corporates are allowed to accept ECBs or can Non-Corporate Bodies also accept ECBs?

- In case of Companies, only those who qualify as an eligible borrower are allowed to accept ECB under the Automatic Route. This means Corporates, including few in services sector, and Infrastructure Finance Companies except financial intermediaries, such as banks, financial institutions, Housing Finance Companies and Non-Banking Finance Companies.
- Non-Corporates like Individuals, Trusts and Non-Profit making organizations are not eligible to raise ECB.

10. Who are the Borrowers eligible to avail ECB?

Eligible Borrowers under Automatic Route	Limit/Restriction specified for Automatic Route	Eligible Borrowers under Approval Route
• **Corporates,** including those in hotel, hospital, software sectors, and **Infrastructure Finance Companies.**	• **Corporate-** maximum USD 750 million or its equivalent during a financial year. • **Hotel, Hospital, & Software Sectors** – up to USD 200 million or its equivalent in a financial year. • Maturity restrictions as stipulated in Question No. 29	• **Corporate-** beyond USD 750 million or equivalent in a financial year. • **Hotel, Hospital, & Software Sectors** – beyond USD 200 million or equivalent per financial year. • Maturity period falling outside the limit specified under the Automatic Route.
• **Special Economic Zones (SEZ)**	• They cannot transfer or on-lend ECB funds to sister concerns or any unit in the Domestic Tariff area. • Maximum USD 750 million or its equivalent during a financial year, subject to maturity restrictions.	• Beyond USD 750 million or equivalent in a financial year. • Maturity period falling outside the limit specified under the Automatic Route.

• **Micro Finance Institutions** (MFIs)[4] engaged in micro finance activities.	• Up to USD 10 million or equivalent during a financial year.	• Needed when borrowings fall outside the limit specified under the Automatic Route.
• **NGOs** engaged in Micro finance activities. • **Micro Finance Institutions** (MFIs) registered as societies, trusts and co-operatives (not being a co-operative bank) and engaged in micro finance activities	• Up to USD 10 million or equivalent during a financial year. • Satisfactory borrowing relationship for at least 3 years with a scheduled commercial bank authorized to deal in foreign exchange in India; and • Obtaining a Certificate of due diligence on 'fit and proper' status of the Board/ Committee of management of the borrowing entity from the designated AD bank.	• Needed when borrowings fall outside the limit specified under the Automatic Route.
• **Small Industries Development Bank of India (SIDBI)**[5]	• Up to 50% of their owned funds under the automatic route.	Beyond 50% of the owned funds, subject to a ceiling of USD 500 million per financial year.
		• **National Housing Bank (NHB) & Housing Finance Companies (HFCs)**[6]. Refer Question No. 14 & 17
		• **On lending by the EXIM Bank** for specific purposes -considered on

[4] Micro finance Institutions (MFIs) registered under the following, and engaged in micro finance activities are eligible to avail of ECBs:
1. Societies Registration Act, 1860
2. Indian Trust Act, 1882
3. Conventional state-level co-operatives acts, the national level multi-state cooperative legislation or under the new state-level mutually aided cooperative acts (MACS Act)
4. Non Banking Financial Company-Micro Finance Institutions' (NBFC-MFIs) registered with the Reserve Bank of India.
5. Companies registered under Section 25 of the Companies Act, 1956

[5] Included via A.P. (DIR Series) Circular No. 48 dated November 6, 2012, for on-lending to MSME sector, as defined under the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006.

[6] Permitted via *A.P. (DIR Series) Circular No. 61 dated December 17, 2012.*

		case by case basis
		• Banks and financial institutions which had participated in the textile or steel sector restructuring package as approved by the Government.[7]
		• **NBFCs**- Refer Question no. 13
		• **Special Purpose Vehicles**, or any other entity notified by the Reserve Bank.[8]
		• **Multi-State Co-operative Societies** engaged in manufacturing activity. Refer Question no.11
		• **SEZ Developers** for providing infrastructure[9] facilities within SEZ.
		• **Developers of National Manufacturing Investment Zones (NMIZs)**[10]

[7] Permitted to the extent of their investment in the package and assessment by the Reserve Bank based on prudential norms. Any ECB availed for this purpose so far will be deducted from their entitlement.

[8] Set up to finance infrastructure companies/ projects exclusively, will be treated as Financial Institutions and ECB by such entities will be considered under the Approval Route.

[9] Infrastructure, as per extant ECB policy means, (i) power, (ii) telecommunication, (iii) railways, (iv) roads including bridges, (v) sea port and airport, (vi) industrial parks, (vii) urban infrastructure (water supply, sanitation and sewage projects), (viii) mining, exploration and refining and (ix) cold storage or cold room facility, including for farm level pre-cooling, for preservation or storage of agricultural and allied produce, marine products and meat.

[10] **NMIZ** means the integrated industrial townships to be developed under the National Manufacturing Policy of November, 2011 for promoting world-class manufacturing activity.

11. Can Entities engaged in manufacturing sector avail ECBs under automatic route?

- All Corporates, including few in the service sectors, are eligible to raise ECB under automatic route subject to the restrictions specified in the ECB guidelines issued by the Reserve Bank of India.
- However, Indian companies in manufacturing sector availing ECBs for repayment of rupee loans availed of for capital expenditure from the domestic banking system has to go through Approval Route.
- Multi-State Co-operative Societies engaged in manufacturing activity can avail ECB under approval route subject to fulfilment of following conditions;
  - the Co-operative Society is financially solvent and
  - the Co-operative Society submits its up-to-date audited balance sheet.
- Further, Developers of National Manufacturing Investment Zones (NMIZs) can avail of ECBs under the approval route for providing infrastructure facilities within SEZ.

12. Can Corporates engaged in services sector avail ECBs under automatic route:

- Corporates in hospitals, hotels and software sectors (registered under the Companies Act, 1956 are allowed to avail of ECB upto USD 200 million or its equivalent in a financial year for meeting foreign currency and/or Rupee capital expenditure for permissible end uses, under automatic route.
- Corporates in the services sector viz. Hotels, hospitals and software sector can avail of ECB beyond USD 200 million or its equivalent in a financial year under approval route.
- Service sector units, other than those in hotels, hospitals and software can avail of ECB under the approval route, subject to the condition that the loan is obtained from foreign equity holders.

13. Can NBFCs avail of ECBs?

- NBFCs other than those specified below are not eligible to avail ECB.
- NBFCs categorized as Non Banking Financial Company-Micro Finance Institutions' (NBFC-MFIs), by the Reserve Bank, can avail ECBs under Automatic Route.
- NBFCs can obtain ECB under the approval route, with minimum average maturity of 5 years, from multilateral financial institutions, reputable regional financial institutions, official export credit agencies and

international banks to finance import of infrastructure equipment for leasing to infrastructure projects.

- NBFCs categorized as IFCs by the Reserve Bank, are permitted to avail of ECBs, including the outstanding ECBs, upto 75% of their owned funds, under the automatic route as per *A.P. (DIR Series) Circular No. 69 dated January 7, 2013.* NBFC-IFCs desirous of availing ECBs beyond 75 % of their owned funds would require the approval of the Reserve Bank and will, therefore, be considered under the approval route. However, the same is subject to fulfillment of compliance norms as stipulated by the Reserve Bank via DNBS circular dated February, 2010 and hedging of the currency risk in full.

14. Can HFCs avail ECBs?

- HFCs cannot avail of ECB under the automatic route.
- However, HFCs can avail of ECB in the form of FCCBs, under the approval route, on satisfying the following minimum criteria:
  - Minimum net worth of the financial intermediary during the previous three years shall not be less than Rs. 500 crore.
  - A listing on the BSE or NSE,
  - Minimum size of FCCB should be USD 100 million and
  - The Applicant should submit the purpose/plan of utilization of funds.
- Further, as per *A.P. (DIR Series) Circular No. 61 dated December 17, 2012,* HFCs qualifying as an eligible borrower can also avail of ECB for financing prospective owners of low cost affordable housing units, under the approval route, subject to fulfilment of following conditions:
  - The HFC should be registered with the National Housing Bank (NHB) and operating in accordance with the regulatory directions and guidelines issued by NHB;
  - The minimum paid-up capital, as per the latest audited balance sheet, shall not be less than INR 50 crore;
  - The minimum Net Owned Funds (NOF) for the past three financial years shall not be less than INR 300 crore;
  - Borrowing through the ECB should be within the HFC's overall borrowing limit of 16 times their Net Owned Funds (NOF);
  - The net non-performing assets (NNPA) shall not exceed 2.5 % of the net advances;
  - The maximum loan amount sanctioned to the individual buyer will be capped at INR 25 lakh subject to the condition that the cost of the individual housing unit shall not exceed INR 30 lakh; and

- The ECB shall be swapped into Rupees for the entire maturity on fully hedged basis.

15. Can Infrastructure Finance Companies (IFCs) avail ECBs?

- IFCs can avail of ECBs under the automatic route.
- However, NBFCs categorized as IFCs, by the Reserve Bank, availing of ECBs beyond 75% of their owned funds needs to go through approval route.

16. Can builders/real estate companies avail ECBs?

- Only Developers/Builders for low cost affordable housing projects, qualifying as an eligible borrower under the guidelines issued by way of *A.P. (DIR Series) Circular No. 61 dated December 17, 2012,* can avail of ECB (not through issue of FCCBs) under the Approval Route. The ECB to be availed will be subject to an aggregate limit of USD 1(one) billion fixed for ECB under the low cost affordable housing scheme which includes ECBs to be raised by developers/builders and NHB/specified HFCs, for the financial year 2012-13. The limit is subject to annual review.
- Builders/developers meeting the eligibility criteria shall have to apply to the National Housing Bank (NHB) in the prescribed format. NHB shall act as the nodal agency for deciding a project's eligibility as a low cost affordable housing project, and on being satisfied, forward the application to the Reserve Bank for consideration under the approval route.
- Once NHB decides to forward an application for consideration of RBI, the prospective borrower (builder/developer) will be advised by the NHB to approach RBI for availing ECB through his Authorised Dealer in the prescribed format.

17. What needs to be done for a builder to avail ECBs through the National Housing Bank?

- If a builder/developer is not able to raise ECB directly, National Housing Bank shall be permitted to avail of ECB, under approval route, for on-lending to such developers who satisfy the following eligibility criteria, subject to the interest rate spread set by the Reserve Bank:
  i) Developers/builders undertaking low cost affordable housing projects should be a company registered under the Companies Act, 1956;
  ii) Such developers/builders should have minimum 5 years' experience in undertaking residential projects, and should have good track record in terms of quality and delivery;

iii) The developers/builders should not have defaulted in any of their financial commitments to banks/ financial institutions or any other agencies;

iv) The project should not be a matter of litigation;

v) The project should be in conformity with the provisions of master plan/ development plan of the area. The layout should conform to the land use stipulated by the town and country planning department for housing projects; and

vi) All necessary clearances from various bodies including Revenue Department with respect to land usage/environment clearance, etc., are available on record.

- The ECB to be availed will be subject to an aggregate limit of USD 1(one) billion fixed for ECB under the low cost affordable housing scheme which includes ECBs to be raised by developers/builders and NHB/specified HFCs, for the financial year 2012-13. The limit is subject to annual review.

18. Who can be the lender for an ECB?

Recognized Lenders	To whom they can lend under the Automatic Route?				
	Eligible Borrowers In general	**NGOs engaged in micro finance**	**MFIs registered as societies, trusts and co-op**	**NBFC-MFIs**	**Section 25 Companies engaged in micro finance.**
International Banks	✓	✓	✓	✓	✓
International Capital Markets	✓	×	×	×	×
Multilateral financial Institutions (such as IFC, ADB, CDC, etc.).	✓	✓	✓	✓	✓
Regional Financial institutions	✓	×	×	✓	×
Government owned developt. financial institutions	✓	×	×	×	×
Export Credit agencies	✓	✓	✓	×	✓
Suppliers of equipments	✓	×	×	×	×

Foreign Collaborators	✓	×	×	×	×
Foreign equity holders* [other than erstwhile OCBs]	✓	×	×	✓	✓
Overseas Organisations	×	✓	✓	✓	✓
Individuals	×	✓	✓	×	✓

Recognized Lenders	**To whom they can lend under Approval Route?**	
	Eligible Borrowers In general	**NBFCs leasing equipments to Infrastructure projects** (*ECB with minimum maturity of 5 years*)
International Banks	✓	✓
International Capital Markets	✓	×
Multilateral financial Institutions (such as IFC, ADB, CDC, etc.).	✓	✓
Regional Financial institutions	✓	✓
Government owned develop. financial institutions	✓	×
Export Credit agencies	✓	✓
Suppliers of equipments	✓	×
Foreign Collaborators	✓	×
Foreign equity holders* [other than erstwhile OCBs]	✓	×
Overseas Organisations	✓	×
Individuals	✓	×
Indirect equity holders[11]	✓	×
Group Company[12]	✓	×

*Refer Question no. 19 below.

[11] Provided that the indirect equity holding in the Indian Company is at least 51%
[12] Provided both the borrower and the foreign lender are subsidiaries of the same parent

19. Is it possible for a foreign equity holder to provide ECBs to the company in which such equity holder holds investment?

Eligibility for a foreign equity holder to be a 'Recognized Lender'		
Particulars	**Under Automatic Route**	**Under Approval Route**
For ECB upto USD 5 million	Minimum paid-up equity of 25% held directly by the lender.	Minimum paid-up equity of 25% held directly by the lender.
For ECB more than USD 5 million	Minimum paid-up equity of 25% held directly by the lender & ECB liability-equity ratio# not exceeding 4:1	Minimum paid-up equity of 25% held directly by the lender & ECB liability-equity ratio# not exceeding 7:1

For computation of ECB liability- equity ratio refer Question No. 20

20. What is the meaning of the debt/equity ratio in case of foreign equity holders?

- Debt/equity ratio in case of foreign equity shareholders means the **ECB liability-equity ratio.**
- **ECB liability** means the proposed borrowing + the outstanding borrowing from the concerned foreign equity holder lender.
- **Equity** means Paid up capital + free reserves (including the share premium received in foreign currency from the concerned foreign equity holder lender)

21. Whether availing of operating lease by an Indian Entity an ECB?

- As per *A.P.(DIR Series)Circular No.24 dated March 1, 2002,* authorised dealers may allow remittance of payment of lease rentals, opening of letter of credit towards security deposit etc. in respect of import of aircraft/ aircraft engine/ helicopter on operating lease basis, after verifying documents to show that necessary approval from the appropriate authorities has been obtained.
- Further, by way of *A.P.(DIR Series)Circular No.13 dated September 27, 2005* ADs may permit airline companies (other than a Public Sector company or a Department/Undertaking of the Government of India/State Government/s) to remit up to USD 1,000,000 (US Dollar one million only) per aircraft

towards security deposit (for payment of lease rentals) with lessor for import of aircraft / aircraft engine / helicopter on operating lease without a standby letter of credit or a guarantee from a reputed international bank abroad or a guarantee of an AD in India against the counter-guarantee of a reputed international bank abroad subject to following conditions:,

- The AD is satisfied about the bona fides of the transaction.
- The airline company has obtained necessary approval from appropriate authority like Ministry of Civil Aviation/Director General of Civil Aviation, Government of India for importing the aircraft/helicopter on operating lease.
- Remittance is permitted as per the Policy on Advance Remittances approved by the Board of Directors of the bank or with the specific approval of the Board of Directors of the bank.
- The final maturity of the security deposit should not be beyond the date of the last installment towards lease rental or date of return of the aircraft / helicopter to the lessor, whichever is later. If required, the deposit amount may be adjusted towards lease rentals. However, the balance security deposit, if any, should be repatriated before expiry of the lease period.

- In case of an airline company in the Public Sector or a Department/Undertaking of the Government of India/State Government/s, ADs may permit remittance of amount exceeding USD 1,00,000 (US Dollar one hundred thousand only) per aircraft towards security deposit (for payment of lease rentals) with lessor subject to conditions specified above and a specific waiver of bank guarantee from the Ministry of Finance, Government of India.
- As per *A. P. (DIR Series) Circular No.62 dated April 20, 2009,* AD Category – I banks are allowed to convey 'no objection' from the Foreign Exchange Management Act (FEMA), 1999 angle for issue of corporate guarantee in favour of the overseas lessor, for operating lease in respect of import of aircraft / aircraft engine / helicopter, after obtaining –
  - Board Resolution for issue of corporate guarantee from the company issuing such guarantees, specifying names of the officials authorised to execute such guarantees on behalf of the company.
  - Ensuring that the period of such corporate guarantee is co-terminus with the lease period.
- Further, the Reserve Bank vide Notification No. FEMA 206 / 2010-RB. dated June 1, 2010 amended the Foreign Exchange Management (Guarantees) Regulations, 2000 and inserted a new clause to the effect that :

" a bank which is an authorised dealer may, subject to the directions issued by the Reserve Bank in this behalf, permit a person resident in India to issue corporate guarantee in favour of an overseas lessor for financing imports through operating lease effected in conformity with the Foreign Trade Policy in force and under the provisions of the Foreign Exchange Management (Current Account Transactions) Rules, 2000 framed by Government of India vide Notification No G.S.R. 381 (E) dated May 3, 2000 and the directions issued by Reserve Bank under Foreign Exchange Management Act, 1999 from time to time."

22. Can an Operating Leasing or Asset Renting entity avail ECBs?

- Operating leasing or Asset Renting entity render the service of providing the asset on operating lease. The lessor has the legal title as well as the economic ownership.
- Being engaged in Service Sector, other than those in hotels, hospitals and software, can avail of ECB under the approval route, subject to the condition that the loan is obtained from foreign equity holders.

23. Is a financial lease also treated as ECB?

- Yes, financial lease[13], when availed out of funds acquired from non-resident lenders, is also treated as ECB.
- NBFCs can avail of ECBs, with minimum average maturity of 5 years, to finance import of infrastructure equipment for leasing to infrastructure projects.

24. Can securitisation be treated as ECB?

- ECB includes commercial loans in the form of securitized instruments like floating rate notes, fixed rate bonds etc.
- Thus raising money by way of securitisation from non-resident investors will be treated as ECB.

25. What is the procedure for getting ECBs under automatic route?

- Eligible Borrower enters into a loan agreement with the recognised lender for raising ECB under Automatic Route.

[13] Financial lease is a lease where the lessee is the owner, while the lessor has only the legal title and not the economic ownership.

- The Borrower is required to submit Form-83, in duplicate, certified by the Company Secretary (CS) or Chartered Accountant (CA) to the designated AD bank.
- The designated AD, after providing requisite details in Part F of the Form-83, will forward one copy to the Director, Balance of Payments Statistics Division, Department of Statistics and Information Management (DSIM), Reserve Bank of India, Bandra-Kurla Complex, Mumbai – 400 051, within 7 days from the date of signing loan agreement between borrower and lender for allotment of LRN.
- The borrower can draw-down the loan only after obtaining the LRN from DSIM, Reserve Bank.
- The Borrowers are then required to submit ECB - 2 Return certified by the designated AD bank on monthly basis so as to reach DSIM, Reserve Bank within 7 working days from the close of month to which it relates.

26. What is the procedure for getting ECBs under approval route?

- The Applicants are required to submit an application in Form ECB through the designated AD to the Chief General Manager-In-Charge, Foreign Exchange Department, Central Office, ECB Division, Reserve Bank of India, Mumbai-400 001, along with following documents certified by AD:-
  - A copy of offer letter from the overseas lender/supplier furnishing complete details of the terms and conditions of proposed ECB.
  - A copy of the import contract, proforma/commercial invoice/bill of lading.
- After obtaining the Approval, the Borrower is required to submit Form-83, in duplicate, certified by the Company Secretary (CS) or Chartered Accountant (CA) to the designated AD bank.
- The designated AD, after providing requisite details in Part F of the Form-83, will forward one copy to the Director, Balance of Payments Statistics Division, Department of Statistics and Information Management (DSIM), Reserve Bank of India, Bandra-Kurla Complex, Mumbai – 400 051, within 7 days from the date of signing loan agreement between borrower and lender for allotment of LRN.
- The borrower can draw-down the loan only after obtaining the LRN from DSIM, Reserve Bank.
- The Borrowers are then required to submit ECB - 2 Return certified by the designated AD bank on monthly basis so as to reach DSIM, Reserve Bank within 7 working days from the close of month to which it relates.

27. Is it necessary that ECBs must be full hedged?

- The forex exposure of following borrowers needs to be fully hedged:-
  - ECB by NGOs engaged in micro finance activities and MFIs.
  - In case of ECB availed by NBFCs categorized as IFCs, the currency risk needs to be fully hedged.
  - If IFCs has availed of credit enhancement facility and the same gets invoked, then in case the novated loan is designated in foreign currency, the IFCs should hedge the entire foreign currency exposure.
  - ECB availed by the HFCs.
  - In case of on-lending to MSME sector in INR, by SIDBI, the foreign currency risk shall be hedged in full.
- In case of other borrowers, hedging of ECB can be optional.

28. What are the restrictions on all-in cost of ECBs? What all is included in all-in costs?

- The All-in cost ceiling applicable up to March 31, 2013, and subject to review thereafter, is as follows:

Average Maturity Period	All-in-cost Ceilings over 6 month LIBOR*[14]
Three years and up to five years	350 basis points
More than five years	500 basis points

* for the respective currency of borrowing or applicable benchmark

- All-in cost includes rate of interest and other fees and expenses in foreign currency.
- However, commitment fee, pre-payment fee, fees payable in Indian Rupees and payment of withholding tax in Indian Rupees are excluded for calculating the all-in-cost.
- Cost of hedging is also not included in all-in cost ceiling.
- In the case of fixed rate loans, the swap cost plus the margin should be the equivalent of the floating rate plus the applicable margin.

[14] LIBOR means London Interbank Offered Rate being a benchmark giving an indication of the average rate at which a LIBOR contributor bank can obtain unsecured funding in the London interbank market for a given period, in a given currency. Libor rates are calculated for ten currencies and 15 borrowing periods ranging from overnight to one year and are published daily at 11:30 am (London time) by Thomson Reuters.

29. What are the maturity restrictions on ECBs?

Amount of ECB availed in a financial year	Minimum Average Maturity*
Up to USD 20 million or its equivalent.	of Three years
Above USD 20 million or its equivalent and up to USD 750 million.	of Five years

* Computation of average maturity period may be viewed at Annex VI - Calculation of Average Maturity- An Illustration.

- In case of domestic debt raised through issue of capital market instruments, such as debentures and bonds, by Indian companies engaged exclusively in the development of infrastructure and by NBFCs- IFC, they can avail of the **facility of credit enhancement** by eligible non-resident entities under the automatic route, subject to fulfilment of certain conditions. One of the conditions provides that underlying debt instruments should have a **minimum average maturity of seven years.**
- One of the conditions for availing of **take-out financing** arrangement through ECB, under the approval route, by eligible borrowers (Refer Question No. 31) stipulates that the loan should have a **minimum average maturity period of seven years.**

30. The maturity restrictions talk about minimum maturity – is there anything on maximum maturity?

Under the extant norms on ECB provided by the Reserve Bank, there are no restrictions pertaining to maximum maturity of ECB.

31. What is Take-out Finance and who are allowed to avail the facility of take-out finance?

- Keeping in view the special funding needs of the infrastructure sector, take-out financing arrangement through ECB, **under the approval route**, has been permitted for refinancing of Rupee loans availed of from the domestic banks by eligible borrowers in the **sea port and airport, roads including bridges and power sectors** for the development of new projects, subject to the following conditions:
  - The corporate developing the infrastructure project should have a tripartite agreement with domestic banks and overseas recognized lenders for either a **conditional** or **unconditional** take-out of the loan within three years of the scheduled Commercial Operation Date (COD).

The scheduled date of occurrence of the take-out should be clearly mentioned in the agreement.

- The loan should have a minimum average maturity period of seven years.
- The domestic bank financing the infrastructure project should comply with the extant prudential norms relating to take-out financing.
- The fee payable, if any, to the overseas lender until the take-out shall not exceed 100 bps per annum.
- On take-out, the residual loan agreed to be taken out by the overseas lender would be considered as ECB and the loan should be designated in a convertible foreign currency and all the extant norms relating to ECB should be complied with.
- Domestic banks / Financial Institutions will not be permitted to guarantee the take-out finance.
- The domestic bank will not be allowed to carry any obligation on its balance sheet after the occurrence of the take-out event.
- Reporting arrangement as prescribed under the ECB policy should be adhered to.

32. What are the options available for repayment of ECBs?

- The ECB can be repaid as per the repayment schedule submitted while obtaining the LRN.
- The Designated AD bank has general permission to make remittances of instalments of principal, interest and other charges in conformity with the ECB guidelines.
- Alternatively, Conversion of ECB into equity is permitted subject to the following conditions:-
  - The activity of the company is covered under the Automatic Route for Foreign Direct Investment or Government (FIPB) approval for foreign equity participation has been obtained by the company, wherever applicable.
  - The foreign equity holding after such conversion of debt into equity is within the sectoral cap, if any, as specified under the Consolidated FDI Policy issued by DIPP from time to time.
  - Pricing of shares is as per the pricing guidelines issued under FEMA, 1999 in the case of listed/ unlisted companies.
- Reporting requirements on conversion of ECB, to the Reserve Bank (Refer Question No. 33.

33. What are the reporting requirements in case of conversion of ECB into equity?

- In case of full conversion of outstanding ECB into equity:
  - Form FC-GPR needs to be filed with the regional office concerned of the Reserve Bank.
  - Form ECB - 2 needs to be submitted to the DSIM, RBI within 7 working days from the close of month to which it relates.
  - The words “ECB wholly converted to equity” should be clearly indicated on top of the Form ECB - 2.
  - Once reported, filing of Form ECB - 2 in the subsequent months is not necessary.
- In case of partial conversion of outstanding ECB into equity:
  - The converted portion needs to be reported in Form FC-GPR to the Regional Office.
  - Form ECB - 2 needs to be filed for the unconverted portion, clearly indicating “ECB partially converted to equity” on the top of the Form ECB - 2.
  - In subsequent months, the outstanding portion of ECB should be reported in Form ECB - 2 to DSIM.

34. Is prepayment allowed in case of ECB?

- Prepayment of ECB up to USD 500 million may be allowed by AD banks without prior approval of Reserve Bank, subject to compliance with the stipulated minimum average maturity period as applicable to the loan.
- Prepayment of ECB for amount exceeding USD 500 million would be considered by the Reserve Bank under the Approval Route.

35. Can ECB be refinanced by raising a fresh ECB?

- Existing ECB may be refinanced by raising a fresh ECB at a higher all-in-cost subject to the condition that the enhanced all-in-cost does not exceed the all-in-cost ceiling prescribed. (Refer question no. 28)

36. What procedure needs to be followed in case of change in the terms and conditions of the ECB?

Particulars	Approval needed from	Condition specified
Changes/Modifications in the drawdown/	Designated AD Category-I banks.	Average Maturity period as declared while obtaining the

repayment schedule[15]	(availed both under the approval and the automatic route)	LRN is maintained.
Changes/Modifications in the drawdown schedule resulting in the original average maturity period undergoing change.	Designated AD Category-I banks. (availed both under the approval and the automatic route)	• no changes/ modifications in the **repayment schedule** of the ECB. • such reduced average maturity period complies with the stipulated minimum average maturity period. • Change in all-in-cost is only due to the change in the average maturity period. • ECB guidelines are complied with and the monthly ECB - 2 returns in respect of the LRN have been submitted to DSIM.
Changes in the currency of borrowing	Designated AD Category-I banks. (availed both under the approval and the automatic route)	• All other terms and conditions of the ECB should remain unchanged. • The proposed currency should be freely convertible. • The changes should be promptly reported to DSIM, Reserve Bank of India in Form-83.
Change of the AD Bank.	Designated AD Category-I banks.	• Subject to No-Objection Certificate (NoC) from the existing designated AD bank and after due-diligence. • The changes should be promptly reported to DSIM, Reserve Bank of India in Form-83.
Changes in the name of the Borrower Company	Designated AD Category-I banks.	• Subject to production of documents evidencing the change in the name from the

[15] The changes in the drawdown/repayment schedule should be promptly reported to the DSIM, RBI in Form-83. However, any elongation/rollover in the repayment on expiry of the original maturity of the ECB would require the prior approval of the Reserve Bank.

		Registrar of Companies. • The changes should be promptly reported to DSIM, Reserve Bank of India in Form-83.
Change in the recognized lender	Designated AD Category-I banks.[16]	• Subject to the AD ensuring that the new lender is a recognized lender as per the extant ECB norms • There is no change in other terms and conditions of the ECB. • ECB is in compliance with the extant guidelines. • The changes should be promptly reported to DSIM, Reserve Bank of India in Form-83.
Cancellation of LRN	The Designated AD Category-I bank may directly approach DSIM for cancellation of LRN for ECBs availed, both under the automatic and approval routes	• Subject to ensuring that no draw down for the said LRN has taken place. • The monthly ECB - 2 returns till date in respect of the LRN have been submitted to DSIM.
Change in the end-use of ECB proceeds[17]	The designated AD Category-I bank may approve requests for ECB availed under the automatic route	• Subject to ensuring that the proposed end-use is permissible under the automatic route as per the extant ECB guidelines. • ECB is in compliance with the extant guidelines. • The monthly ECB - 2 returns till date in respect of the LRN have been submitted to DSIM.

[16] When the original lender is an international bank or a multilateral financial institution (such as IFC, ADB, CDC, etc.) or a regional financial institution or a Government owned development financial institution or an export credit agency or supplier of equipment and the new lender also belongs to any one of the above mentioned categories

[17] Change in the end-use of ECBs availed under the **approval route** will continue to be referred to the Foreign Exchange Department, Central Office, Reserve Bank of India

		• The changes should be promptly reported to DSIM, Reserve Bank of India in Form-83.
Reduction in amount of ECB	The Designated AD Category-I bank may approve requests for ECB availed under the automatic route	• Subject to ensuring that the consent of the lender for reduction in loan amount has been obtained. • The average maturity period of the ECB is maintained. • The monthly ECB - 2 returns till date in respect of the LRN have been submitted to DSIM. • There are no changes in other terms and conditions of the ECB. • The changes should be promptly reported to DSIM, Reserve Bank of India in Form-83.
Reduction in the all-in-cost of ECB	Designated AD Category-I banks. (availed both under the approval and the automatic route)	• Subject to ensuring that the consent of the lender has been obtained. • There are no changes in other terms and conditions of the ECB. • The monthly ECB - 2 returns till date in respect of the LRN have been submitted to DSIM.

37. Can Corporate, which have violated the extant ECB policy and are under investigation by the Reserve Bank, avail of ECB?

- As per *A.P. (DIR Series) Circular No. 87 dated March 5, 2013* all entities are permitted to avail of ECBs under the automatic route as per the current norms, notwithstanding the pending investigations / adjudications / appeals by the law enforcing agencies, without prejudice to the outcome of such investigations / adjudications / appeals.
- Accordingly, in case of all applications where the borrowing entity has indicated about the pending investigations / adjudications / appeals,

Authorised Dealers while approving the proposal shall intimate the concerned agencies by endorsing the copy of the approval letter.

- The same procedure will be followed by the Reserve Bank of India also while approving such proposals.

38. If I go for ECBs, should I hedge myself, or leave it unhedged?

- This is substantially dependent on (a) whether you have a natural hedge in your operations and revenues; and (b) what view would you like to take on the movements in foreign exchange over time. Since ECBs are a long-term exposure, the long-term movement of exchanges rates tends to kill the interest rate differentials in a pair of currencies. However, this fundamental argument, called interest rate parity theory, is currently affected by a whole lot of macroeconomic factors.

39. How about accounting for forex losses in ECBs?

- The Ministry of Corporate Affairs, vide Notification No. G.S.R. 225(E) dated 31st March, 2009 issued Companies (Accounting Standards) Amendment Rules, 2009 thereby inserting paragraph 46 in Accounting Standard (AS) 11 relating to "The Effects of Changes in Foreign Exchange Rates".
- By virtue of the same,
  - Exchange differences arising on reporting of long-term foreign currency monetary items at rates different from those at which they were initially recorded during the period, or reported in previous financial statements relating to acquisition of a depreciable capital asset, can be added to or deducted from the cost of the asset and can be depreciated over the balance life of the asset.
  - In other cases, it can be accumulated in "Foreign Currency Monetary Item Translation Difference Account" in the enterprise's financial statements and amortized over the balance period of such long-term asset/liability.
- These treatments were initially allowed in respect of accounting periods commencing on or after 7th December, 2006 and up to 31st March, 2011 and later, vide Notification No. G.S.R. 378 (E) dated 11th May, 2011 up to 31st March, 2012.
- However, vide MCA Notification No. G.S.R. 913(E) dated 29th December, 2011, the above mentioned treatment for accounting forex losses was allowed in respect of accounting periods commencing on or after 7th December, 2006 and ending on or before 31st March, 2020.

Also see our other related write-ups:

- **Article on 'An attempt to fill the gap-significant changes in ECB Policy' at http://india-financing.com/An_attmept_to_fil_the_gap_changes_made_in_ECB_policy.pdf**
- **Article on 'Relaxation of ECB Norms- Advantage for Manufacturing & Infrastructure Sector' at http://india-financing.com/new_ECB_norms.pdf**
- **Presentation on ' Overview of FDIs and ECBs' at http://india-financing.com/Overview_of_FDIs_and_ECBs.pdf**
- **Article on 'RBI tightens ECB route for NIMZ developers' at http://india-financing.com/RBI_tightens_ECB_route_for_NIMZ_developers.pdf**
- **Article on 'Simplification of ECB Procedures-delegation of Powers to AD Bank' at http://india-financing.com/Simplification_of_ECB_procedures.pdf**
- **Other articles on Foreign Direct Investments, FEMA, ECB etc http://india-financing.com/staff-publications-fdi.html**