

Note

RBI opens a new window for NBFC-AFCs to avail ECBs



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Note

RBI has opened a new window for the access of ECBs for the NBFC sector and has made it possible for NBFCs categorized as Asset Finance Companies (AFCs) by the Reserve Bank, to avail funds through ECB. RBI vide its circular no. 6 dated 8th July 2013 has reviewed its ECB policy and as per the revised policy of RBI NBFC-AFCs are now allowed to avail of ECB under the automatic route and the approval route subject to the conditions laid down in the circular.

Present Scenario

Eligible borrowers under the automatic route as relevant to NBFCs

At present in accordance with the extant guidelines, eligible borrowers under the automatic route include corporates, including those in the hotel, hospital, software sectors (registered under the Companies Act, 1956) and Infrastructure Finance Companies (IFCs) except financial intermediaries, such as banks, financial institutions (FIs), Housing Finance Companies (HFCs) and Non-Banking Financial Companies (NBFCs), other than those specifically allowed by Reserve Bank, are eligible to raise ECB. Thus from the above definition it was clear that NBFCs are not eligible borrowers of ECB.

Further the definition of eligible borrowers also includes Non-Banking Financial Companies (NBFCs) categorized as 'Non Banking Financial Company-Micro Finance Institutions' (NBFCMFIs) and complying with the norms prescribed as per circular DNBS.CC.PD.No. 250/03.10.01/2011-12 dated December 02, 2011. Hence NBFC-MFIs will be permitted to avail of ECBs from multilateral institutions, such as IFC, ADB etc, regional financial institutions/international banks / foreign equity holders and overseas organizations.

The definition also includes Infrastructure Finance Companies (IFCs) i.e. Non-Banking Financial Companies (NBFCs), categorized as IFCs by the Reserve Bank. They are also permitted to avail of ECBs, including the outstanding ECBs, upto 75 per cent of their owned funds, for on-lending to the infrastructure sector as defined under the ECB policy.

Eligible borrowers under the approval route as relevant to NBFCs

The definition of eligible borrowers under the approval route includes Non-Banking Financial Companies (NBFCs) availing ECB 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. The definition also includes Infrastructure Finance Companies (IFCs) i.e. Non-Banking Financial Companies (NBFCs), categorized as IFCs by the Reserve Bank, are permitted to avail



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of ECBs, including the outstanding ECBs, beyond 75 per cent of their owned funds, for on-lending to the infrastructure sector as defined under the ECB policy, subject to their complying with the conditions specified in the DNBS Circular: DNBS.PD.CCNo.168 / 03.02.089 / 2009-10 dated February 12, 2010 and hedging of the currency risk in full.

Which NBFCs are eligible borrowers at present

Thus from the above definitions we come to the conclusion that the following non-banking financial companies (NBFCs) are only allowed to avail of ECB fund.

- 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.

All other NBFCs other than those mentioned above are not eligible borrowers of ECB.

Scenario post the RBIs circular for NBFCs

Post RBI circular scenario makes the lease industry all the more luring for NBFC sector. The leasing industry is already facing various changes and this circular of RBI is a boom for the industry.

What does the circular state

As per RBI's circular vide Circular No. 6 dated 08.07.2013 of RBI/2013-14/126 A.P. (DIR Series), NBFC-AFCs which previously could only avail ECB through the approval route can now also have access of ECB funds through the automatic route. It can do so subject to the following conditions:



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- NBFC-AFCs are allowed to avail of ECB under the automatic route from all recognized lenders as per the extant ECB guidelines with minimum average maturity period of five years in order to finance the import of infrastructure equipment for leasing to infrastructure projects.
- In cases, where the NBFC-AFCs avail of ECB in the form of Foreign Currency Bonds from international capital markets, such ECBs will be permitted to be raised only from those international capital markets that are subject to regulations prescribed by the host country regulator in a Financial Action Task Force (FATF) member country compliant with FATF guidelines.
- NBFC-AFCs can avail ECB (including outstanding ECBs) under the automatic route only upto 75 per cent of its owned funds, this shall be subject to a maximum of USD 200 million or its equivalent per financial year.
- ECBs by AFCs above 75 per cent of their owned funds can be procured but only under approval route by obtaining approval from Reserve Bank; and
- The currency risk of such ECBs is required to be hedged in full.

Our Analysis of the circular

The ECBs through the automatic route can be availed only if all of the following conditions are satisfied:

- NBFC that are categorized as Asset Finance Companies (AFCs) by the Reserve Bank are only covered under this circular. The definition of Asset Finance Companies has been given hereunder;

Asset Finance Companies has been defined as any company which is a financial institution carrying on as its principal business the financing of physical assets supporting productive / economic activity, such as automobiles, tractors, lathe machines, generator sets, earth moving and material handling equipments, moving on own power and general purpose industrial machines. Principal business for this purpose is defined as aggregate of financing real/physical assets supporting economic activity and income arising therefrom is not less than 60% of its total assets and total income respectively.

- The ECB taken should have minimum average maturity period of five years.



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- The ECBs can be raised from the eligible lenders only as are defined under the extant guidelines for External Commercial Borrowing issued by the RBI. The eligible lenders are International Banks, International Capital Markets, Multilateral financial Institutions (such as IFC, ADB, CDC, etc.), Regional Financial Institutions, Government owned development financial institutions, Export Credit Agencies, Suppliers of equipments, Foreign Collaborators, Foreign equity holders [other than erstwhile OCBs].
- The AFC should avail ECB only for the purpose of financing the import of infrastructure equipments. Infrastructure equipments are the equipments which are to be utilised in the infrastructure sector and infrastructure sector as defined under the extant guidelines for External Commercial Borrowings as

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. Thus equipments used in the above sectors are called infrastructure equipments and the funds obtained by AFCs for financing import of these equipments are only allowed, by way of ECB as per this circular.

Further ECB should be availed only for importing and not for purchasing domestically the infrastructure equipment.

- These infrastructure equipments have to be leased out. The circular clearly specifies that the infrastructure equipment has to be imported for the purpose of leasing it and not for any other purpose. Lease can be either finance lease or operating lease.
- The lease of equipment shall be made only to infrastructure projects. Infrastructure projects are the projects undertaken with respect to the infrastructure sector which has already been defined above. Leasing the equipment to any other sector would not fulfill the requirements for obtaining ECBs.



Note

- NBFC-AFCs can avail ECB (including outstanding ECBs) under the automatic route only upto 75 per cent of its owned funds, subject to a maximum of USD 200 million or its equivalent per financial year. This means that the ECB already availed together with that proposed to be raised should not exceed the limit of 75 per cent of the NBFC-AFCs owned funds. Even if the threshold of 75 percent is not reached ECB per financial year shall not exceed USD 200 million.
- For availing ECBs above this limit of 75 per cent of the owned funds the NBFC-AFC shall have to go through the approval route by obtaining the approval of the RBI.

Impact of this circular on the existing industry

- The circular has come up on a positive note for the growing leasing industry. It will help in the industry's boom in the near future by its far reaching effects.
- There will be more and more infrastructure equipments being imported into India improving the developments in the infrastructure industry.
- The only way allowed by the circular is leasing out the infrastructure equipments. Thus the leasing industry will have more and more business. This can be obtained by way of initiating new infrastructure projects, by adding on more infrastructure equipments to the existing infrastructure projects.
- The ECBs would now become a source of top up fund for the NBFC-AFCs. It will now be able to explore foreign capital through a new venture.

Thus from the above discussion we come to the conclusion that now like the NBFC-IFCs, NBFC-AFCs can also avail ECB upto 75 per cent of its owned funds under the automatic route and to avail funds beyond 75 per cent it has to go through the approval route, subject to the conditions stated above.

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