

# External Commercial Borrowings (ECB) Framework

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Practising Company Secretaries

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# About Us



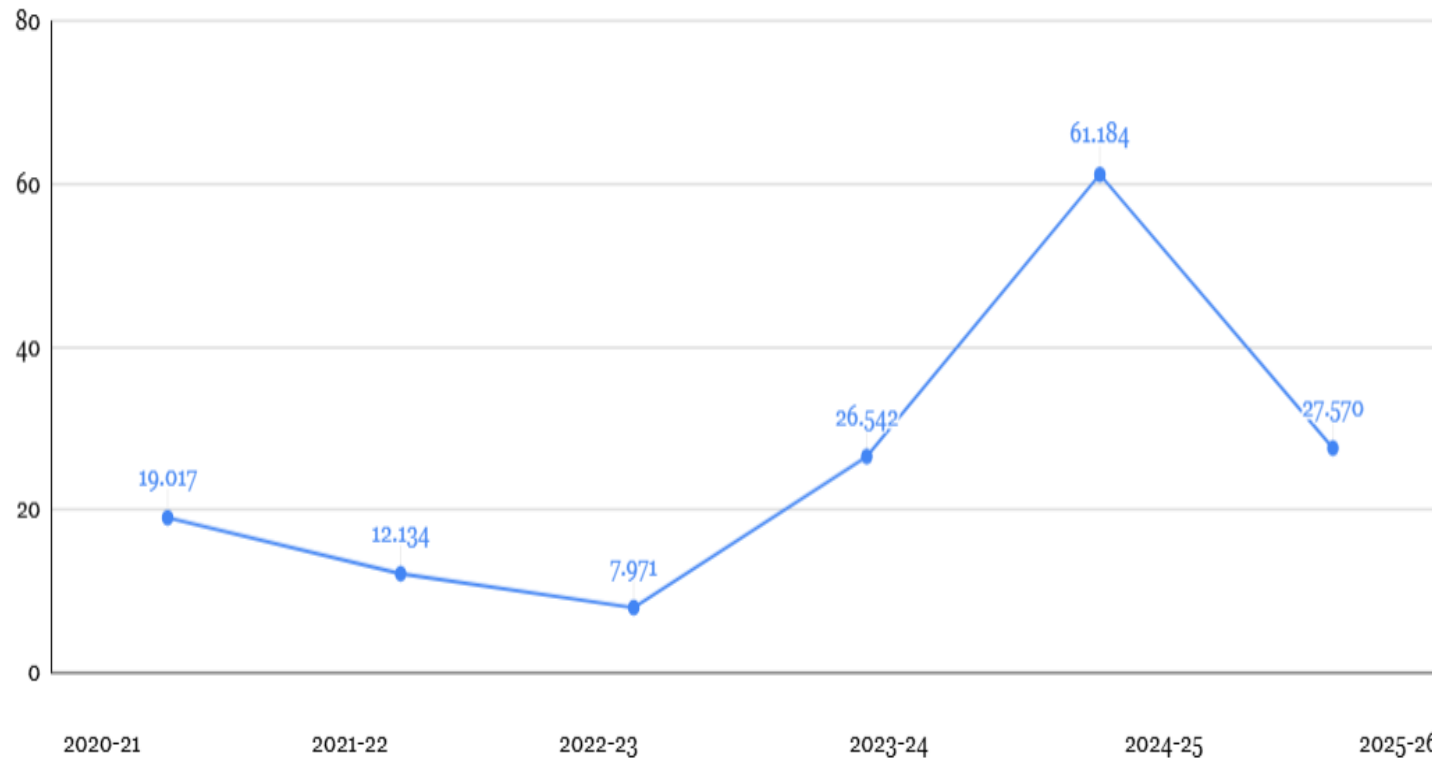
- Vinod Kothari and Company, company secretaries, is a firm with more than 35 years of vintage
  - Based out of Kolkata, Mumbai, New Delhi and Bengaluru
- We are a team of qualified company secretaries, chartered accountants, lawyers and managers.

***Our Organization's Credo:***

***Focus on capabilities; opportunities follow***

# Introduction

ECB Statistics (in Billions)



Source: RBI data

## What are ECBs ?

- Borrowing
- done by an Eligible Borrower
- from a Recognized Lender
- as per Schedule I
  - of FEMA (Borrowing and Lending) Regulations, 2018

## Governing framework

- FEMA (Borrowing and Lending) Regulations, 2018
- RBI Master Direction – Reporting under FEMA

# Who is eligible to borrow & lend ?

## ■ Eligible Borrower [Para 1- Sch I]

- Any Person resident in India can avail ECB
  - If incorporated, established or registered under a Central or State Act;
    - Individual not permitted
  - Eligible borrowers undergoing restructuring or CIRP will be permitted only if expressly provided under the approved restructuring or resolution plan.
  - Entities against whom any investigation, adjudication or appeal by a law enforcement agency is pending can also raise ECB, subject to disclosure in Form ECB I.

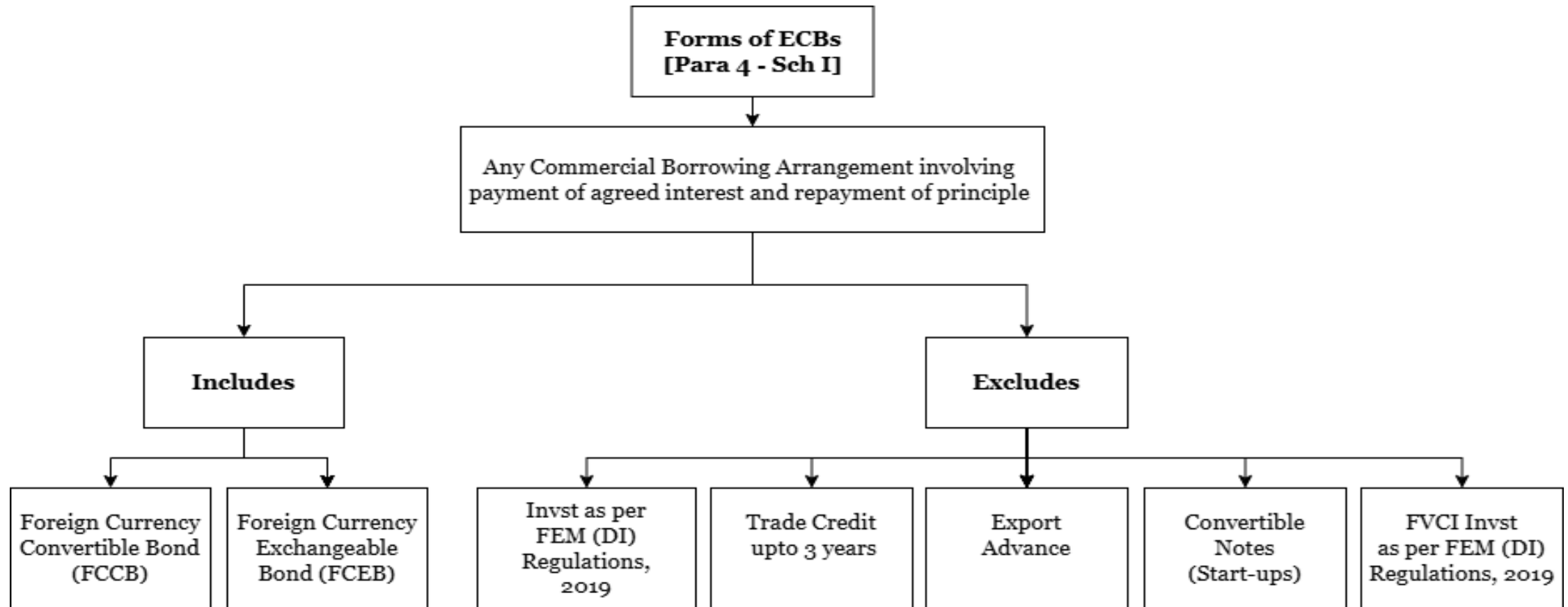
## ■ Recognised Lender [Para 2 - Sch I]

- Any PROI (including individuals) can be a lender.
- A branch outside India of an entity whose lending business is RBI regulated.
- Financial institution or a branch set up in IFSC.
  - financial institution include banks, NBFCs, insurance companies, brokerage firms, merchant banks, investment banks, pension funds, MFs , trusts, exchanges, clearing houses, and any other entity that may be specified by the GOI or a Financial Regulatory Authority.

## ■ Currency of Borrowing [Para 3 - Sch I]

- ECB can be denominated in FCY or INR.
- Permissible change in currency: FCY to another FCY, FCY to INR, INR to FCY
- Conversion at prevailing rate on agreement date or at a rate that does not increase borrower's liability.

# Forms of ECBs



*Whether Preference Shares (PS)/ Debentures are covered under ECBs?*

# Limit on raising ECBs

## ■ Borrowing Limit [Para 5 - Sch I]

- An eligible borrower may raise ECB up to the higher of:
  - O/S ECBs of **USD 1 billion**; or
  - Outstanding borrowing (external + domestic debt) - **3X the net worth**
- Outstanding borrowings exclude:
  - Non-fund based credit facilities
  - Securities mandatorily convertible into equity
- Proposed ECB considered while calculating borrowing limit
  - ECB for refinancing not included
- Limit not applicable to RBI, SEBI, IRDA, PFRDA regulated borrower entities.

## ■ Cost of Borrowing [Para 7 - Sch I]

- As per prevailing market conditions
- For ECBs with MAMP of less than 3 years:
  - FCY-denominated ECB: Benchmark Rate + 3%
  - INR-denominated ECB: Benchmark Rate + 2.5%
  - For fixed rate loans: the ceiling is applicable for the floating rate + spread of the corresponding swap.
- *Cost of borrowing means rate of interest, other fees, expenses, charges, guarantee fees and export credit agency charges, whether paid in FCY or INR, but includes commitment fees and statutory taxes payable in India [Reg 2(1)(g)]*
- Prepayment & penal charges as per prevailing market condition

# End use restriction

Sr. No	Restricted end use	Permitted end use
1.	Chit Funds	-
2.	Nidhi Company	-
3.	Real estate business and construction of farmhouses	<ol style="list-style-type: none"> <li>1. Construction-development project - Plots sold after development of trunk infrastructure</li> <li>2. Industrial parks - Minimum 10 units; no unit &gt;50% area; ≥66% area for industrial use.</li> </ol>
4.	Agricultural and animal husbandry	<ol style="list-style-type: none"> <li>1. Floriculture, horticulture &amp; cultivation of vegetables &amp; mushrooms under controlled conditions;</li> <li>2. Development and production of seeds and planting material;</li> <li>3. Animal husbandry (including breeding of dogs), pisciculture, aquaculture and apiculture; and</li> <li>4. Services related to agro and allied sectors</li> </ol>
5.	Plantation	<ol style="list-style-type: none"> <li>1. Tea, coffee, rubber, cardamom, palm oil tree, olive oil tree plantation</li> </ol>

# End use restriction

Sr. No	Restricted use	Permitted end use
6.	Trading in Transferable Development Rights (TDR)	-
7.	Transacting in listed/unlisted securities	<p>I. For corporate actions such as <b>merger, demerger, amalgamation, arrangement, or acquisition of control</b> in accordance with the Act under which the entity is incorporated/established, SAST, SARFAESI and IBC Code</p> <p><i>a. if it is availed for <b>strategic purposes</b>, driven by the core objective of <b>creating long-term value</b> through potential synergies, rather than for short-term gains.</i></p>
8.	Repayment of a domestic INR loan <ul style="list-style-type: none"> <li>● availed for restricted end-use; or</li> <li>● classified as a non-performing asset (NPA)</li> </ul>	-
9.	On-lending for purposes for which funds cannot be borrowed and utilised in this regulation	-

# Maturity Period

## **Minimum maturity standardized (MAMP) [Para 6 - Sch I]:**

- Single minimum average maturity period of 3 years for all ECBs.
- Manufacturing entities may raise ECB with MAMP of 1-3 years for outstanding ECBs up to USD 150 mn.
- Call and put options, not exercisable prior to completion of MAMP.
- MAMP not applicable in case of:
  - Conversion of ECB to Non-debt Instrument (NDI) as per FEMA NDI Rules;
  - Repayment using proceeds from issuance of NDI (on repat basis) as per FEMA NDI Rules received after ECB drawdown;
  - Refinance of ECB (MAMP requirement applicable on the original borrowing);
  - Waiver of debt by the lender;
  - Repayment of ECB for undertaking corporate actions such as closure, merger, demerger, arrangement, acquisition of control, amalgamation, resolution or liquidation by the lender or the borrower.

# Other Conditions

## ■ **Arm's length requirement [Para 9 – Sch I]:**

- ECBs from related parties to be on an arm's length basis.
- a transaction between two related parties that is conducted as if the transacting parties were unrelated, so that there is no conflict of interest
- Related party shall have the same meaning as assigned to it under Companies Act, 2013.

## ■ **Parking of ECB Funds[ Para 10 – Sch I]:**

- For FCY expenditure: ECB proceeds can now be parked in an FCY account in India or abroad.
- For INR expenditure: ECB proceeds must be credited to an INR account in India by the end of the next month after receipt.

## ■ **Reporting**

- **Form ECB I** – for providing details of ECB and obtaining LRN
- **Revised Form ECB I** –
  - separate form for reporting any change in previously reported ECB parameters.
  - to be filed within 7 calendar days after month end in which change was effected.
- **Form ECB 2** – for reporting receipt of ECB proceeds and debt servicing.
  - Event based - within 7 calendar days from the end of the month in which the ECB received or debt servicing was undertaken.

# THANK YOU

Check out more of our resources:

1. [ECBs become Easy: RBI liberalises norms for external commercial borrowings](#)
2. [RBI rationalises Guarantee regulations](#)
3. [Resource Centre on FEMA](#)
4. [Resource Centre on ECB](#)