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ECB - OVERVIEW
ECB - OVERVIEW
MEANING

ECBs are commercial loans raised by eligible resident entities from recognized non-resident entities.

It should conform to parameters such as minimum maturity, permitted and non-permitted end-uses, maximum AIC ceiling, etc.

Conformity with various parameters like:
- Minimum maturity
- Permitted & non-permitted end-uses
- Eligible borrowers & recognised lenders
- Max. AIC ceiling etc.
### ECB - OVERVIEW

#### ECB FRAMEWORK

<table>
<thead>
<tr>
<th>Track I</th>
<th>Track II</th>
<th>Track III</th>
</tr>
</thead>
<tbody>
<tr>
<td>➤ Medium term foreign currency denominated ECB</td>
<td>➤ Long term foreign currency denominated ECB</td>
<td>➤ INR denominated ECB</td>
</tr>
<tr>
<td>➤ Min. avg maturity of 3/5 years</td>
<td>➤ Min. avg maturity of 10 years</td>
<td>➤ Min. avg maturity of 3/5 years</td>
</tr>
</tbody>
</table>

### FORMS OF ECB

- Loans including bank loans
- Securitized instruments
- Buyers’ credit
- Suppliers’ credit
- FCCBs
- Financial Lease
- FCEBs

ECB framework is not applicable to investment in NCDs in India by RFPIs
ECB - OVERVIEW
ENTRY ROUTES

AUTOMATIC ROUTE
No approval of RBI (Form 83)

APPROVAL ROUTE
Prior approval of RBI (through AD Bank - Form ECB)
PARAMETERS FOR ECB
PARAMETERS FOR ECB

- Minimum average maturity period
- Eligible borrowers
- Recognised lenders / investors
- All-in-Cost
- End-use prescriptions
- Individual Limits
- Currency of Borrowing
## Minimum Average Maturity Period

<table>
<thead>
<tr>
<th>Tracks</th>
<th>Particulars</th>
<th>Min. Avg. Maturity Period</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Track I</strong></td>
<td>Upto USD 50 mn or its equivalent</td>
<td>3 years</td>
</tr>
<tr>
<td></td>
<td>Beyond USD 50 mn or its equivalent</td>
<td>5 years</td>
</tr>
<tr>
<td></td>
<td>Companies in Infrastructure sector, NBFC-IFCs, NBFC-AFCs, Holding Companies, CICs</td>
<td>5 years</td>
</tr>
<tr>
<td></td>
<td>FCCBs and FCEBs</td>
<td>5 years</td>
</tr>
<tr>
<td><strong>Track II</strong></td>
<td>Any amount</td>
<td>10 years</td>
</tr>
<tr>
<td><strong>Track III</strong></td>
<td>Same as Track I</td>
<td></td>
</tr>
</tbody>
</table>
ELIGIBLE BORROWERS

Track I
- Companies in manufacturing and software development sectors
- Shipping and airlines companies
- SIDBI
- Units in SEZs
- Exim Bank (only under the approval route)
- Companies in infrastructure sector, NBFCs-IFCs, NBFC-AFCs, Holding Companies and CICs

Track II
- All entities listed under Track I
- REITs and INVITs under the framework of SEBI

Track III
- All entities listed under Track II
- NBFCs under the framework of RBI
- NBFCs-MFIs, Registered NPOs, Societies, Trusts, Co-operatives, NGOs engaged in micro finance activities
- Companies engaged in miscellaneous services
- Developers of SEZs / NMIZs

- Start Ups (as recognized by Central Government) eligible to raise ECB, irrespective of business activity
  - LLPs raising ECB?
# RECOGNISED LENDERS / INVESTORS

**Track I**
- International Banks
- International capital markets
- Multilateral / Regional / Government owned financial institutions
- Export credit agencies
- Suppliers of equipment
- Foreign Equity Holders*
- Overseas long term investors
- Overseas branches / subsidiaries of Indian banks

*‘Foreign Equity Holder’:
  (a) Minimum 25% direct equity holding by the lender in the borrowing entity
  (b) Minimum indirect equity holding of 51%, and
  (c) Group company with common overseas parent

**Track II**
- All entities listed under Track I except overseas branches / subsidiaries of Indian banks

**Track III**
- All entities listed under Track I except overseas branches / subsidiaries of Indian banks
- For NBFCs-MFIs, other eligible MFIs, NPOs and NGOs, ECB can be availed from overseas organisations and individuals subject to conditions
## ALL-IN-COST

### Track I
- ECB with 3 to 5 years min. avg. maturity - 300 bps p.a. over 6 month LIBOR or applicable benchmark
- ECB with above 5 years min. avg. maturity - 450 bps p.a. over 6 month LIBOR or applicable benchmark
- Penal interest, if any - upto 2% over and above the contracted rate of interest

### Track II
- Maximum spread over the benchmark will be 500 bps p.a.
- Remaining conditions same as under Track I

### Track III
- It should be in line with the market conditions
## End-Use Prescriptions

### Track I

**Capital Expenditure**
- Import of capital goods and related payment towards import of services, technical know-how and license fees
- New Projects
- Modernization / expansion of existing units
- Local sourcing of capital goods
- Payment of capital goods already imported but unpaid
- Refinancing of existing trade credit for import of capital goods
- ODI in JVs/ WOS
- Acquisition of shares of PSU under disinvestment program
- Refinancing of existing ECB provided residual maturity is not reduced

**Special Cases**
- SIDBI: Only on-lending to borrowers in MSME sector
- Units of SEZs: For their own requirements
- Shipping and airlines companies: For import of vessels and aircrafts respectively
- General corporate purpose only from direct/indirect equity holder or group company for min. avg. maturity of 5 years
- NBFC-IFCs and NBFC-AFCs - only for financing infrastructure
- Holding Companies and CIC - only for on-lending to infrastructure SPVs

**Under Approval Route:**
- Import of second hand goods as per DGFT Guidelines
- On-lending by Exim bank
**END-USE PRESCRIPTIONS**

<table>
<thead>
<tr>
<th>TRACK II</th>
<th>TRACK III</th>
</tr>
</thead>
<tbody>
<tr>
<td>For all purposes excluding:</td>
<td>▶ NBFCs:</td>
</tr>
<tr>
<td>▶ Real estate activities</td>
<td>▪ On-lending to the infrastructure sector</td>
</tr>
<tr>
<td>▶ Investing in capital market</td>
<td>▪ Providing hypothecated loans to domestic entities for acquisition of capital goods / equipments</td>
</tr>
<tr>
<td>▶ Using proceeds for equity investment domestically</td>
<td>▪ Providing capital goods/equipment to domestic entities by way of lease and hire-purchases</td>
</tr>
<tr>
<td>▶ On-lending to other entities with any of the above objectives</td>
<td>▶ For Developers of SEZs/ NMIZs:</td>
</tr>
<tr>
<td>▶ Purchase of land</td>
<td>▪ Only for providing infrastructure facilities within SEZ/NMIZ</td>
</tr>
<tr>
<td></td>
<td>▶ For NBFCs-MFI, other eligible MFIs, NGOs and registered NPOs:</td>
</tr>
<tr>
<td></td>
<td>▪ For on-lending to SHGs</td>
</tr>
<tr>
<td></td>
<td>▪ For micro-credit</td>
</tr>
<tr>
<td></td>
<td>▪ For micro finance activity including capacity building</td>
</tr>
<tr>
<td></td>
<td>▶ For all other eligible entities, same end uses as mentioned under Track II</td>
</tr>
</tbody>
</table>
LIMITS & CURRENCY

Eligible entities can raise ECB up to following maximum limit - AUTOMATIC ROUTE

<table>
<thead>
<tr>
<th>Sector</th>
<th>Maximum amount per Financial Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Companies in infrastructure and manufacturing sectors, NBFC-IFCs, NBFC-AFCs, Holding Companies and CICs</td>
<td>USD 750 mn or its equivalent</td>
</tr>
<tr>
<td>Companies in Software development sector</td>
<td>USD 200 mn or its equivalent</td>
</tr>
<tr>
<td>Entities engaged in micro finance activities</td>
<td>USD 100 mn or its equivalent</td>
</tr>
<tr>
<td>Other entities</td>
<td>USD 500 mn or its equivalent</td>
</tr>
</tbody>
</table>

Proposals beyond aforesaid limits - APPROVAL ROUTE

ECB LIABILITY : EQUITY RATIO

- Automatic Route - 4 : 1
- Approval Route - 7 : 1

Applicability:
- For ECB from direct equity holders
- Not applicable if total of all ECBs upto USD 5 mn or equivalent

CURRENCY

- ECB can be raised in any freely convertible foreign currency as well as in INR
- Change of currency from one convertible foreign currency to any other convertible foreign currency as well as INR is freely permitted
- Change of currency from INR to any foreign currency, however, not permitted
SECURITY FOR RAISING ECB
Creation of charge on immovable properties

- Security shall be subject to Acquisition and Transfer of Immovable Property in India Regulations
- In case of enforcement / invocation, property should be sold to Person Resident in India and proceeds shall be repatriated to liquidate the outstanding ECB

Creation of charge on movable properties

- In the event of enforcement/ invocation of the charge, the claim of the lender will be restricted to the outstanding ECB claim
- Encumbered movable assets may also be taken out of the country subject to getting ‘NOC’ from domestic lender/s, if any

Creation of charge on financial securities

- Pledge of shares of the borrowing company held by the promoters as well as domestic companies of the borrower is permitted
- In case of invocation of pledge, transfer of financial securities shall be in accordance with the FEMA provisions as applicable including provisions on sectoral cap and pricing
ISSUANCE OF GUARANTEE

<table>
<thead>
<tr>
<th>Issue of Corporate and Personal Guarantee subject to:</th>
<th>Issuance of guarantee etc. by Indian Banks and FIs:</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ Copy of Board Resolution with details specified</td>
<td>☐ Issuance of guarantee, SBLC, letter of undertaking or letter of comfort by Indian banks, FIs and NBFCs is not permitted</td>
</tr>
<tr>
<td>☐ Specific request from individuals to issue personal guarantee indicating details of ECB</td>
<td>☐ Indian financial intermediaries shall not invest in FCCBs in any manner</td>
</tr>
</tbody>
</table>

NON-RESIDENT GUARANTEE FOR DOMESTIC FUND BASED AND NON-FUND BASED FACILITIES:

- The non-resident guarantor may discharge the liability by:
  - Payment out of rupee balance held in India or
  - Remitting the funds to India or
  - Debit to FCNR(B) / NRE account

- Non-resident guarantor may enforce his claim against resident borrower to recover the amount and on recovery amount can be repatriated subject to certain conditions

- General permission is available to resident to make payment to non-resident who has met the liability under a guarantee
TRADE CREDIT
TRADE CREDIT

- **Trade Credit**
  - Credits extended by the overseas supplier, bank and financial institution
    - **Suppliers’ Credit**: Credits for import into India extended by overseas supplier
    - **Buyers’ Credit**: Loans for payment of import into India arranged by importer from overseas bank or financial institution
      - Maturity up to 5 years
      - AIC: 350 bps over 6 month LIBOR or applicable benchmark
# TRADE CREDIT

## AUTOMATIC ROUTE - only approval of AD Bank required

<table>
<thead>
<tr>
<th>Trade Credit for Import of:</th>
<th>Maximum amount per import transaction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital and non-capital goods</td>
<td>USD 20 mn or its equivalent</td>
</tr>
</tbody>
</table>

## Trade credit beyond aforesaid limits - APPROVAL ROUTE

### Capital Goods

- Maturity Prescription
  - Upto 5 years from date of shipment

### Non-Capital Goods

- Maturity Prescription
  - Lesser of:
    - 1 year from date of shipment
    - Operating cycle

- Guarantee for Trade Credit
  - Up to USD 20 million per import transaction
  - For a period of maximum 3 years from date of shipment
  - Up to USD 20 million per import transaction
  - For a period of maximum 1 year from date of shipment
OTHER KEY ASPECTS
CONVERSION OF ECB INTO EQUITY

**Pre-conversion into equity**
- Lender
  - Outside India
  - India
- ECB
- Borrower Co.

**Post-conversion into equity**
- Shareholder
  - Outside India
  - India
- Investment in Equity
- Borrower Co.

**Conditions for conversion into equity**
- Operating Sector of Borrowing Company:
  - Either covered under the automatic route for FDI or
  - Approval from FIFP has been obtained as per the FEMA Provisions
- Lender’s consent to be obtained
- Conversion should be without any additional cost and should not result in breach of applicable sector cap
- Compliance with applicable pricing guidelines for shares (Fair Value on date of conversion)
- Reporting requirements in Form FC-GPR & ECB 2 Return
- Consent of other lenders, if any, to the same borrower is available or at least information regarding conversion is exchanged with them
FCCBS & FCEBS

**FCCBs**
- Shall conform to the FDI guidelines including sectoral cap
- Requirements of:
  - Minimum maturity of 5 years
  - Call & put option, if any, shall not be exercisable prior to 5 years
  - Issuance without any warrants attached
  - Issue related expenses upto 4% of issue size and in case of private placement upto 2% of the issue size

**FCEBs**
- Issued only under the approval route
- Minimum maturity of 5 years
- Exchangeable into equity share of another company, or on the basis of any equity related warrants attached to debt instruments
- AIC should be within the ceiling specified by RBI for ECB
## ECB FACILITY FOR START-UPS

<table>
<thead>
<tr>
<th><strong>Eligibility</strong></th>
<th>An entity recognized as a Startup by the Central Government</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Amount</strong></td>
<td>Amount limited to USD 3 mn or equivalent per FY either in INR or convertible foreign currency or combination of both</td>
</tr>
<tr>
<td><strong>Min. Avg. Maturity</strong></td>
<td>3 years</td>
</tr>
<tr>
<td><strong>AIC</strong></td>
<td>Mutually agreed between the borrower and lender</td>
</tr>
<tr>
<td><strong>Recognised Lender</strong></td>
<td>Resident of a country who is member of FATF or FATF-Style Regional Bodies and not from a country non-compliant with FATF guidelines</td>
</tr>
<tr>
<td></td>
<td>Not permissible to raise ECB from Overseas branches/subsidiaries of Indian banks and overseas WOS / JV of an Indian company</td>
</tr>
<tr>
<td><strong>Form of Borrowing</strong></td>
<td>Loans or non-convertible or optionally convertible or partially convertible preference shares</td>
</tr>
<tr>
<td><strong>End Use</strong></td>
<td>Used for any expenditure in connection with the business of borrower</td>
</tr>
<tr>
<td><strong>Conversion</strong></td>
<td>Conversion into equity is freely permitted subject to FDI Provisions for start-ups</td>
</tr>
<tr>
<td><strong>Security</strong></td>
<td>Movable, immovable, intangible assets (including patents, IPRs), financial securities, etc subject to norms applicable to foreign lenders holding such securities</td>
</tr>
<tr>
<td><strong>Guarantee</strong></td>
<td>Issuance of corporate or personal guarantee is allowed</td>
</tr>
<tr>
<td></td>
<td>Guarantee by a non-resident is allowed only if it is a recognised lender as above</td>
</tr>
</tbody>
</table>
POWERS DELEGATED TO AD BANKS
NOT APPLICABLE IN CASE OF FCCBs / FCEBs

- Changes/ Modification in the Drawdown/ Repayment Schedule
- Changes in the currency of Borrowing
- Change of the AD Category I Bank
- Change in the name of the Borrower Company
- Transfer of ECB
- Change in the recognized Lender
- Change in the name of the Lender
- Prepayment of ECB
- Cancellation of LRN
- Change in the end use of ECB
- Reduction in the amount of ECB
- Changes in all-in-cost of ECB
- Refinancing of existing ECB.
- Extension of matured but unpaid ECB
THANK YOU