External Commercial Borrowings & Trade Credits (ECB & TC)

ECB Policy

- RBI and GOI reviews ECB policy regularly- macroeconomic situation, changing market conditions, sectoral requirements, domestic investments demand and global economic situation.
- The guiding principles- to keep maturities long, costs low and encourage infrastructure and export sector financing .

ECBs & TCs – Statutory basis..

- Section 6 (3)(d) of the FEMA, 1999 read with Notification No. FEMA 3/ 2000-RB viz. FEM (Borrowing or Lending in Foreign Exchange) Regulations, 2000, dated May 3, 2000.

- **Master Circular** No.12/2014-15 dated July 1, 2014

External Commercial Borrowing

Commercial loans from abroad (bank loans, trade credit, securitized instruments (e.g. bonds, non convertible/ optionally conv. preference shares, FCCB, FCEB etc.) - quantitative, cost and end-use and tenor restrictions (min maturity 3 yrs)

- Automatic Route
  - Eligible borrowers – corporates, NGOs, SEZ units
  - Recognised lenders – banks, capital markets, financial Institutions, export credit agencies, suppliers, collaborators, equity holders
- Approval route (RBI)

External Commercial Borrowing

Automatic Route

Eligible Borrowers:

Corporates (including in the hotel, hospital and software), Infrastructure Finance Companies except financial intermediaries (banks, FIs, NBFCs), SEZ units for own use, NGOs with 3 years satisfactory banking relationship. Individuals, Trusts and Non-Profit making organizations not eligible

Recognised Lenders:

Intl. Banks, Intl. capital markets, multilateral / regional financial institutions, Government owned DFIs, export credit agencies, equipment suppliers, collaborators, equity holders other than erstwhile OCBs (minimum direct equity holding 25%, ECB beyond USD 5m – ECB:equity ratio $\neq 4:1$). (Overseas org. & Individual lender with certificates to MFIs)

Amount and Maturity:

Maximum USD 750m per financial year. Hotel, hospital and software sector USD 200m (not for land acquisition).

Up to USD 20m - minimum average maturity three years, beyond 20m upto 750 m– five years

Up to USD 20 m - call/ put option allowed (minimum average maturity to be complied)

External Commercial Borrowing

Automatic Route (contd.)

All-in-cost ceiling:

(Interest, fcy fees and expenses except commitment fee, pre-payment fee and INR fees. Withholding tax in INR excluded)

Three yrs and Up to five years – 6m LIBOR + 350 bps

Beyond five years – 6m LIBOR + 500 bps

(Fixed rate loans : swap cost +margin)

End Use (permitted):

Investment (import of capital goods), new projects, modernization/ expansion, infrastructure, specified service sectors (hotel, hospital, software) , ODI in JV/ WOS, disinvestment of PSU shares, lending to SHGs or for micro-credit, telecom spectrum, refinancing of existing ECB if fresh ECB at lower all-in-cost and residual maturity of original ECB maintained

End Use ((Not permitted):

On-lending or investment in capital market (includes investment in SPVs, MMMFs etc.), acquiring a company in India, real estate, working capital, general corporate purpose and repayment of rupee loans (companies in infrastructure sector can utilise 25 per cent of fresh ECB for refinancing of Rupee debt under approval route)

External Commercial Borrowing – Automatic Route (contd.)

No Guarantees

- Issuance of guarantee, standby LC, letter of undertaking or letter of comfort by banks, FIs and NBFCs from India relating to ECB is **not permitted**

Security- Borrower's choice

- Choice of security left to the lender/ supplier is left to the borrower. (Immoveable property –subject to Ntfn. 21 and 20).
- NOC can be issued by ADs.

Parking of Proceeds

- ECB proceeds meant for Rupee expenditure in India (local sourcing of capital goods, on-lending to Self-Help Groups or for micro credit, payment for spectrum allocation, etc.) to be brought to India immediately. Meant for expenditure in Foreign Currency can be retained abroad and parked in FD, etc.

External Commercial Borrowing – Automatic Route (contd.)

Prepayment

- ADs can allow prepayment of ECB up to USD **500 million without prior approval of RBI** subject to compliance with the stipulated minimum average maturity period as applicable to the loan

Refinancing of an existing ECB

- The existing ECB may be refinanced by raising a fresh ECB subject to the condition that the fresh ECB is raised at a lower all-in-cost and the outstanding maturity of the original ECB is maintained

Procedure

- Borrowers may enter into loan agreement complying with the ECB guidelines with recognised lender for raising ECB under Automatic Route without the prior approval of RBI. The borrower must obtain a Loan Registration Number (LRN) from RBI before drawing down the ECB

External Commercial Borrowing – Automatic Route (contd.)

Investigation

- Corporates under investigation may avail ECB without prejudice to the outcome – AD to endorse the information to such agencies.

External Commercial Borrowing

Approval Route

Eligible Borrowers:

On lending by EXIM Bank for specific purposes, ECB with minimum average maturity of 5 years by NBFCs, Infrastructure Finance Companies (IFCs) beyond 50 per cent of owned funds for on-lending to infrastructure sector, FCCBs by HFCs, SPVs set up to finance infrastructure companies/ projects, Multi-State Co-operative Societies engaged in manufacturing, SEZ developers.

Recognised Lenders:

Intl. Banks, Intl. capital markets, multilateral financial institutions, Govt owned DFIs, export credit agencies, equipment suppliers, collaborators, equity holders other than erstwhile OCBs (minimum direct equity holding 25%, ECB beyond USD 5m – ECB:equity ratio $\neq 7{:}1$). More relaxations – service sector units, >51 %, group companies with same parent.

Amount and Maturity:

Additional ECB above 750m under automatic route. Hotel, hospital and software sector above USD 200m.

Maturity- Upto USD 20 m not less than 3 yrs, beyond 20m – not less than five years

External Commercial Borrowing

Approval Route (contd.)

All-in-cost ceiling:

(includes Interest, fcy fees and expenses except commitment fee, pre-payment fee and INR fees. Withholding tax in INR excluded)

Three yrs and Up to five years – 6m LIBOR + 350 bps

Beyond five years – 6m LIBOR + 500 bps

(Fixed rate loans : swap cost +margin)

End Use (permitted):

Investment (import of capital goods), new projects, modernization/ expansion, infrastructure, specified service sectors (hotel, hospital, software) , ODI in JV/ WOS, disinvestment of PSU shares, initial spectrum payments made in rupees can be refinanced by ECBs (ECB raised within 12 months from the date of first pmt to Govt, AD to monitor end use, no guarantees by banks)

End use permitted- Infra sector companies permitted to avail ECB under approval route.

End Use ((Not permitted):

On-lending or investment in capital market (includes investment in SPVs, MMMFs etc.), acquiring a company in India, real estate, working capital, general corporate purpose and repayment of rupee loans

External Commercial Borrowing – Approval Route (contd.)

Guarantees

- Guarantees (standby LC, etc) **not permitted by banks.** For **SMEs and ECB by textile companies will be considered under approval route** subject to prudential norms.

Security borrower's choice

- Choice of security is left to the lender/ supplier is left to the borrower. (Immoveable property –subject to Ntfn. 21 and 20). NOC can be issued by Ads.

Parking of Proceeds

- ECB proceeds meant for Rupee expenditure in India (local sourcing of capital goods, on-lending to Self-Help Groups or for micro credit, payment for spectrum allocation, etc.) to be brought to India (earlier could be parked abroad). Meant for exp in FE can be retained abroad and parked in FD, etc.

External Commercial Borrowing – Approval Route (contd.)

Prepayment

- up to **USD 500 million by AD** without prior approval of RBI subject to compliance with the stipulated minimum average maturity period as applicable to the loan. **Above USD 500 m by RBI under approval**

Refinancing of an existing ECB

- The existing ECB may be refinanced by raising a fresh ECB subject to the condition that the fresh ECB is raised at a lower all-in-cost and the outstanding maturity of the original ECB is maintained

Procedure

- Applicants are required to submit form ECB through designated AD bank to RBI, CO, Mumbai along with necessary documents.

ECB – FCEB

- Foreign Currency Exchangeable Bond (FCEB)- means bond expressed in FC, principal and interest payable in FC, issued by an **Issuing Company** and subscribed to by a person who is a resident outside India (eligible under FDI policy), in foreign currency and exchangeable into equity share of **another company**, to be called the **Offered Company** (must be a listed company), in any manner, either wholly, or partly or on the basis of any equity related warrants attached to debt instruments.
- **End use – Issuing company** >in JV/WOS or in Promoter Group companies- **Promoter company>** can use with end-uses as per ECB policy
- **Min Maturity 5 yrs. Approval route only.**

Reporting arrangements..

- **For allotment of LRN**, borrowers to submit Form 83, in duplicate, certified by the CS or CA to the designated AD bank. One copy is to be forwarded by the AD bank to RBI, DSIM, BKC, Mumbai – 400 051.
- The borrower can **draw-down the loan** only **after obtaining the LRN** from RBI
- Borrowers -to submit **ECB-2** Return monthly-certified by the designated AD bank –to DSIM, RBI within 7 working days from the close of month to which it relates
- **ECB details** (name of borrower, amount, maturity, etc) – Automatic and Approval route **placed on RBI website** with a lag of one month.

Compliance with ECB Guidelines

- **Borrower is responsible** to ensure that ECB raised / utilised are in conformity with the ECB guidelines
- Any **contravention** of the ECB guidelines will be viewed seriously and will **invite penal action** under FEMA 1999. The designated AD bank is also required to ensure that raising / utilisation of ECB is in compliance with ECB guidelines at the time of certification.

Conversion of ECB into equity

- **Conversion** of ECB into equity is permitted, subject to – compliance with FDI policy under Automatic or Govt route (FIPB approval), sectoral cap, pricing guidelines.
- **Reporting-** Conversion may be reported in case of full conversion – FC-GPR and ECB-2 (no subsequent reporting). Partial conversion – FC-GPR and ECB-2 (continue to report in ECB-2 for remaining ECB amount).

Delegation of powers to AD

- **(a)** Changes/ modifications in the drawdown/ repayment schedule allowed- both under the approval and the automatic routes, subject to the **condition** that the average maturity period, as declared while obtaining the LRN, is maintained.
- **Changes** in the drawdown/repayment schedule to be **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 RBI.
- (b) Changes in the currency of borrowing – freely convertible currency
- (c) Change of the AD bank – NOC from existing AD.
- (d) Changes in the name of the Borrower Company – ROC certificate

Delegation of powers to AD

- **(e)** Changes in the recognised lender – can be permitted y AD if the lender is international fin. Institution / Govt owned fin. Institution and eligible lender as per ECB norms. In case of foreign equity holder, requires prior approval of RBI.
- **Changes** in the use of funds under automatic route can be allowed by AD bank subject tot approved uses. ECB under approval route requires RBI prior approval for changes in use of ECB.
- Reduction in amount of ECB and all-in cost of ECB subject to consent of lender has been obtained and average maturity is maintained and no other changes are made to ECB terms. The changes if any have to be reported to DSIM, RBI, Mumbai.

Trade Credits (TCs)

- Trade Credits' (TC) refer to credits extended for imports directly by the **overseas supplier, bank and financial institution** for **maturity of less than three years**. Suppliers' credit relates to credit for imports into India extended by the overseas supplier, while buyers' credit refers to loans for payment of imports into India arranged by the importer from a bank or financial institution outside India.
- SC & BC for 3 years and above are governed by ECB guidelines.
- AD banks can approve TCs– up to USD 20 Mil – per transaction for import of goods permissible under FT policy of DGFT up to one year. Up to USD 20 Mil for import of capital goods between one and three years. No roll overs or extensions allowed and not above USD20m.
- All in cost ceilings- 6m LIBOR + 350 bps (incl. arranger fee, upfront fee, legal, processing charges, etc.)
- Guarantees can be given
- Consolidated **reporting** by ADs to RBI – monthly for TC approvals, qrtly for guarantees.

Thank You

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Foreign Exchange Management –
Overseas Investment (ODI-JV/WoS)

ODI- Statutory basis..

- Direct investments by residents in Joint Venture (JV) and Wholly Owned Subsidiary (WOS) abroad – As per Section 6(3)(a) of the FEMA 1999, read with FEMA Notification 120/RB-2004 dated July 7, 2004, viz. Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004, as amended from time to time
- **Master Circular** No.11/2014-15 dated July 1, 2014

ODI- ADVANTAGES..

- Promoting global business by Indian entrepreneurs;
- Medium of economic co-operation between India and other countries;
- Transfer of technology and skill;
- Sharing of R & D;
- Access to global market;
- Promotion of brand image;
- Generation of employment;
- Utilisation of raw materials available in India and host country;
- Important driver of foreign trade;
- Source of foreign exchange earning.

ODI – Prohibitions..

- Indian parties are prohibited from making investment in a **foreign entity engaged in real estate** or **banking business**, **without the prior approval of the Reserve Bank.**

ODI- General Permission

- In terms of Regulation 4 of the Notification, general permission has been granted to persons residents in India for purchase / acquisition of securities in the following manner :
- (a) out of the funds held in RFC account;
- (b) as bonus shares on existing holding of foreign currency shares; and
- (c) when not permanently resident in India, out of their foreign currency resources outside India.
- General permission is also available to sell the shares so purchased or acquired

Overseas Investment…

- ODI through :
- (i) **Automatic route & (ii) Approval route of RBI**.

Automatic Route :

- By Indian party[Corporate/Body created under an Act of Parliament/Reg. PS Firm- including individuals] – not exceeding 400% of the net worth as on date of the last balance sheet in JV/WOS, >$1bn requires RBI prior approval even it is within 400%;
- Towards: Capital/Loans/Guarantees (in case of performance guarantee only 50%);
- Ceiling not applicable if investment is out of EEFC balances and ADR/GDR proceeds;

ODI – Automatic Route

- Application to ADs in form ODI for effecting remittances;
- Investments in **Nepal** only in Indian Rupees.
- In **Bhutan** – Rupees as well as in freely convertible currencies;
- **Pakistan** – no Automatic route is available;
- Indian party to report in 30 days from the date of transaction in form ODI through AD bank for submission to RBI.

ODI- Automatic route- Method of funding

Method of funding :

- Drawal of foreign exchange from AD bank in India;
- Capitalisation of exports;
- Swap of shares;
- Proceeds of ECBs/FCCBs;
- Exchange of ADRs/GDRs;
- Balances in EEFC A/c (400% net worth not applicable)
- Proceeds of ADRs/GDRs (400% net worth not applicable)

ODI- Automatic Route….

Investment in Financial Sectors : Additional conditions to be complied.

- Registration with the regulatory authority in India as Financial Entity;
- Earned profits during the preceding three years;
- Approval to invest in FS overseas from regulators both in India and abroad;
- Fulfillment of prudential norms relating to capital adequacy as prescribed by Regulatory Authority in India.

ODI- Automatic Route….

Investment in Equity of Companies Registered Overseas/ Rated debt instruments

- Portfolio investments -by listed companies permitted up to 50 % of their net worth in (i) shares and (ii) bonds/ fixed income securities;
- Investment by Mutual funds – Indian MFs registered with SEBI are permitted to invest within overall cap of USD 7 billion in permitted securities specified
- Domestic VCFs registered with SEBI may invest in equity or equity linked instruments of off-shore VCF subject to an overall limit of USD 500 million

ODI – Approval Route

Approval Route :

- Cases not covered under auto route – RBI will consider the applications based on viability of JV/WOS, contribution to external trade and other benefits accrue to India, financial position and business track record of Indian party and the foreign entity and expertise and experience of the Indian party in the same or related line of activity as of the JV/ WOS;
- Investment in energy and natural resources sector;
- Established proprietorship or unregistered partnership export firms;
- Registered Trusts/Societies as per eligibility criteria;

Overseas Investment contd..

Obligation of Indian party:-

- Receive share certificate or any other documents as evidence of investment to be submitted to AD bank who will retain the same. A certificate to this effect to be submitted by AD to RBI along with APR;
- Repatriate to India the dues receivable from foreign entity;
- Submit the documents/annual performance report to RBI;
- Report post investment changes/additional investment in existing JV/WOS;
- Report details of disinvestment within 30 days from the date of disinvestment;
- Online submission system has also been introduced.

Restructuring of the balance sheet of overseas entity involving write off of capital and receivables

- The Indian promoters who have set up WOS abroad or have at least 51 per cent stake in an overseas JV, may write off capital (equity / preference shares) or other receivables, such as, loans, royalty, technical knowhow fees and management fees in respect of the JV /WOS, even while such JV /WOS continues to function as under:
- (i) **Listed** Indian companies are permitted to write off capital and other receivables up to **25 per cent** of the equity investment in the JV /WOS under the **Automatic Route**; and
- (ii) **Unlisted** companies are permitted to write off capital and other receivables up to **25** per cent of the equity investment in the JV /WOS under the **Approval Route**.

Operational instructions to AD banks

- **Designated branches** – all transactions related the JV/WOS through the same designated branch – may designate different branch for different JV/WOS
- ADs may allow remittances of investments after satisfying compliance with the regulations by Indian party
- O**nline reporting** of the ODI has been operationalised . The system enables on-line generation of UIN, ack. of remittances and filing of APRs

Operational instructions to AD banks

- – As per the new reporting system, AD bank can generate UIN, however subsequent remittances should be permitted only after receiving auto generated e-mail from RBI
- ADs can allow remittances towards loan/ guarantee only after Indian party has equity participation. If the host country rules permit incorporation of a company without equity participation, prior approval of RBI may be obtained before allowing loan/ guarantee
- Foreign currency account may be permitted to be opened abroad if host country rules specify.

Want to Know More?

- To keep oneself updated one may refer to the RBI website (**www.rbi.org.in**) for the following:

  - **Notifications**

  - A.P (Dir Series) Circulars

  - **Master Circulars**

  - **FAQs.**

THANKS

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