



WESTERN INDIA REGIONAL COUNCIL
OF THE INSTITUTE OF CHARTERED
ACCOUNTANTS OF INDIA

**BORROWING AND LENDING IN
RUPEES AND FOREIGN
EXCHANGE**

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Introduction

- FEMA provisions applicable
 - Dealing with non-residents in Foreign Exchange
 - Dealing with non-residents in Indian rupees
- Capital Account Transaction
 - **Section 2 (e) of FEMA** - Borrowing or Lending, whether in foreign exchange or in rupees, would constitute “Capital Account transaction”.
- Section 6 (3) – RBI may by regulation, prohibit, restrict or regulate the following:
 - (d) any borrowing or lending in foreign exchange in whatever form by whatever name called.
 - (e) any borrowing or lending in rupee in whatever name called between a person resident in India and a person resident outside India
- Other Notifications
- Circulars issued by RBI
- Master Circulars



Borrowing and Lending in Rupees

Borrowing in Rupees

- Contents:
- Borrowing by person other than an Indian company from NRI or PIO
- Borrowing by an Indian company from NRI or PIO
- End use restrictions

Borrowing by person other than an Indian company from NRI or PIO

- Borrowing only on non-repatriable basis
- Loan received by Inward remittance / NRE / FCNR / NRO A/c
- Period of loan \leq 3 years
- Rate of Interest \leq 2% over bank rate on date of availment of loan
- Repayment and interest to be credited to NRO A/c
- Amount borrowed not repatriable

Borrowing in Rupees by an Indian Company

- Borrowing can only be by way of NCD
- It can be on repatriation / non-repatriation basis
- Only from NRI / PIO
- Issue by public offer
- Rate of interest \leq 3% over PLR of SBI on the date of resolution in Company's general body meeting
- Redemption period $>$ 3 years
- File with RBI within 30 days of receipt of remittance / issue of NCD prescribed details
- Borrowing on repatriation basis
 - Percentage of NCD issued to the total paid up value of each series of NCDs issued shall not exceed the ceiling prescribed for issue of equity / convertible debentures for FDI as specified by RBI
 - Investment by Inward remittance / NRE / FCNR
- Borrowing on Non-Repatriation basis:
 - Investment by inward remittance / NRE / FCNR / NRO

End use of Funds

- End use restrictions
 - Chit fund
 - Nidhi company
 - Agricultural or plantation activities
 - Real estate business
 - Shall not include development of townships, Construction of residential / commercial premises, roads or bridges
 - Construction of Farm House or trading in TDRs
 - Investment by way of capital or otherwise in any company, partnership firm or proprietorship concern or any entity
 - Relending
 - Relending to the infrastructure co.
 - Keeping in F.D with banks in India pending utilization for permissible end uses.



LENDING IN RUPEES

Lending in Rupees

- Contents:
- Lending by an AD to NRI
- Lending by an AD to NRI employees for ESOP
- Housing loan to NRI / PIO
- Lending to NRI / PIO employees by Indian body corporate
- Lending to NRI relative by resident individual
- Change in residential status

Lending by an AD to NRI

- Loan against shares / securities held by NRI in his own name
- Loan against immovable property - other than agricultural land or farm house
- Loan to be utilised for meeting borrower's personal requirements or for his own business purpose
- Loan shall not be utilised for any of the prohibited activities
- RBI directives should be complied with.
- Loan amt. shall not be credited to NRE / FCNR of the NRI borrower
- Loan amt. shall not be repatriable
- Repayment of loan should be
 - By inward remittance / debit to NRO / NRE / FCNR A/c
 - Sale proceeds of the securities against which loan was granted.

Lending by an AD to NRI employees for ESOP

- Rupee loan to NRI employees of Indian companies for acquiring shares under ESOP subject to following:
 - ESOP should be as per policy approved by AD's Board
 - Loan amt. shall not exceed 90% of purchase price or Rs. 20 lakhs whichever is lower per NRI employee
 - ROI and margin to be decided by banks subject to RBI directives
 - Amt. should be paid directly to the company and not to employees
 - Repayment of loan by inward remittances / debit to NRO / NRE / FCNR A/c
 - Loan will be included for reckoning capital market exposures and the AD will ensure compliance with prudential norms

Repayment of loans to non-residents by relatives

- Loan granted to Non-Resident by an AD
- Repayment can be made by any relative in India
- By crediting the borrower's loan account through the bank account of such relative

Rupee Housing Loan to NRI / PIO

- AD or Housing Financial Institution may grant housing loan to NRI / PIO
 - Acquisition of residential accommodation in India
 - Quantum of loan, margin money and period of repayment shall be at par with resident person
 - Loan amt. shall not be credited to NRE / FCNR
 - Security - equitable mortgage of property or lien on borrower's other assets in India
 - Repayment of Installment, interest or other charges
 - Inward remittance
 - NRE / FCNR NRO
 - Rental income from renting of property acquired

Lending to NRI / PIO employees by Indian body corporate

- Loan to be granted for personal purposes including purchase of housing property in India
- Loan should be granted in accordance with lender's staff welfare scheme/ staff housing scheme and other terms and conditions applicable to resident in India
- Loan should not be utilised for prohibited activities
- Loan amt. to be credited to borrower NRO account
- Repayment of loan:
 - Inward remittance
 - NRE / FCNR / NRO A/c of the borrower
- Lender shall not accept repayment from any other source

Lending to NRI relative by resident individual

- Resident individual may grant loan to NRI relative by way of crossed cheque / electronic transfer subject to:
 - Loan is free of interest
 - Minimum maturity of loan is 1 year
 - Loan amt. shall be within the overall limit of LRS per F.Y.
 - Loan amt. shall be utilised for borrower's personal requirements or for his own business purpose in India.
 - Loan not to be utilised for prohibited activities
 - Loan to be credited to NRO a/c of NRI / PIO
 - Loan amt. shall not be remitted outside India
 - Repayment
 - Inward remittance
 - Debit to NRO / NRE / FCNR
 - Sale proceeds of securities against which such loan was granted

Change in Residential Status

- Change in residential status of borrower:
 - Continuation of loan by AD to a resident person who becomes NR
 - AD to be satisfied about the reason to continue
 - Period \leq period of loan originally fixed
 - Repayment by Inward remittance / NRE / FCNR / NRO
 - Indian students studying abroad – continue educational / other loan availed by them when resident of India
- Change in residential status of lender
 - In case of resident lender advancing loan to PRII

Use of Credit Card in India

- Use of Credit Card in India by NR is permitted
 - Will not be treated as borrowing or lending in rupees



BORROWING OR LENDING IN FOREIGN EXCHANGE

Why ECB

- Low cost
- High Capital Investment
- Longer maturity period



LENDING IN FOREIGN CURRENCY

Lending in Foreign Currency

- Contents:
- Indian entity lend in foreign exchange to its WOS / JV abroad
- PRII lend in foreign currency for trade related purpose to his overseas importer customer
- Indian co.'s in India - grant loan in FC to employees of their branches outside India

Lending in Foreign Exchange by persons other than AD.

- An Indian entity may lend in foreign exchange to its WOS / JV abroad.
 - Indian entity means a company / body corporate / firm
- PRII may lend in foreign currency
 - funds held in his EEFC a/c
 - for trade related purpose to his overseas importer customer
 - If loan amt. exceeds US \$ 1,00,000, a guarantee of bank of international repute situated outside India is required
- Indian co.'s in India - grant loan in FC to the employees of their branches outside India for personal purposes



BORROWING IN FOREIGN CURRENCY

Borrowing in Foreign Currency

- Contents:
- PRII - borrow from a bank outside India for execution of turnkey project
- Importer in India - Import of capital goods
- Individual resident in India
- PRII (other than branches or office in India) can raise foreign currency
 - Schedule I - Automatic Route
 - Schedule II - Approval Route
- Trade Credit

Borrowing in Foreign Exchange by persons other than AD.

- PRII - borrow from a bank outside India for execution outside India of a turnkey project or civil construction contract or in connection with exports.
- An importer in India - for import of goods into India - avail foreign currency credit - period not exceeding 6 months
- An individual resident in India
 - Borrow not exceeding US\$ 2,50,000 from close relative outside India
 - Minimum maturity period of loan is one year
 - Loan is free of interest
 - Loan is received by inward remittance or by debit to NRE / FCNR
 - Close relative - defined in sec. 6 of Companies Act, 1956

Other borrowings in Foreign Exchange

- PRII (other than branch or office of overseas entity in India) may raise foreign currency loan as specified in:
 - Schedule I under automatic route
 - Schedule II under approval route
 - Trade Credit not exceeding USD 20 million per import transaction

Forms of ECB

- Commercial Loan
 - Bank loan
- Securitized Instruments
 - Floating rate notes
 - Fixed rate bonds
 - Non-convertible, optionally convertible or partially convertible preference shares
- Buyers' credit
- Suppliers' credit
- All the loan availed from Non-resident lenders and minimum average maturity of 3 years



SCHEDULE I – AUTOMATIC ROUTE

Automatic Route – Synopsis

- Eligible Borrowers
- Recognised lenders
- End use (Purpose)
- Maturity and amount
- All-in-cost ceilings
- Security
- Pre-payment
- Parking of loan amount
- Loan agreement
- Drawal of loan
- Reporting
- Debt servicing

Eligible Borrowers

- Corporates (including hotel, hospital, software sectors) registered under Companies Act.
- NBFC – Infrastructure Finance Co's (IFC)
- NBFC – Asset Finance Co's (AFC)
- SIDBI
- Units in SEZ for own requirement
- NGOs engaged in micro finance activities.
- Micro finance institutions engaged in micro finance activities
- Co.'s in miscellaneous services sector – engaged in training activities (excluding educational institutes), R & D activities and co's supporting infrastructure sector.
 - Not covered – Trading business, logistics services, financial & consultancy services
- Holding Companies / core investment co's.

Individuals, Trusts and Non-Profit Organizations - not eligible to raise ECB

Recognised Lenders

- ECB can be raised from internationally recognized sources such as
 - International Banks
 - International capital markets
 - Multilateral financial institutions (IFC, ADB)
 - Regional financial institutions
 - Govt. owned financial institutions
 - Export credit agencies
 - Suppliers of equipments
 - Foreign collaborators
 - Foreign equity holders (other than OCB)

Recognised Lenders

- Foreign equity holder
 - ECB up to USD 5 million (o/s and proposed) - minimum paid up equity of 25% held directly by the lender.
 - ECB more than USD 5 million – minimum paid up equity of 25% held directly by the lender and ECB liability-equity ratio not exceeding 4:1 (ECB o/s and proposed)
- Indirect equity holders - at least holding 51% by the lender
- Group company - provided both the borrower and the foreign lender are subsidiaries of the same person

Calculating of Equity and ECB liability

- Calculation of equity ECB liability-equity ratio
 - Paid up Capital
 - Free reserves (including share premium received in foreign currency) as per latest audited balance sheet.
- If more than one foreign equity holders in the borrowing company:
 - Portion of the share premium in foreign currency of the lender shall only be considered for calculating ECB liability-equity ratio
- ECB liability - all existing o/s and proposed liability will be taken.

Calculation of Equity – ECB liability

- A & B are foreign equity holder in Co. C in India holding 50% each.
- A wants to give USD 50,00,000 ECB to C
- Total equity of C is as follows:
- Paid up capital 20,00,000
- Share Premium (50% each) 40,00,000
- 60,00,000

How much ECB can A give to C Co.

Calculation of Equity – ECB liability

- Paid up equity held by A in C Co. is 50%.
 - A is eligible to lend
- For calculating the ratio:
 - ECB will be 50,00,000/-
 - Equity = Paid up capital + Premium of A only to be considered
 - = 20,00,000 + 20,00,000 = 40,00,000
 - $50,00,000 / 40,00,000 = 1.25:1$
- Since it is within the limit of 4:1, A is eligible to give ECB of USD 50,00,000 to Co. C

Amount and Maturity

SECTOR	MAXIMUM AMOUNT (USD)
Corporate (other than hotel, hospital, corporates and miscellaneous services sector)	750 million or its equivalent during a F.Y.
Corporates in services sector viz. Hotels, hospitals, software sector and miscellaneous services sector	200 million or its equivalent in a F.Y.
NGO-engaged in micro finance activities and Micro Finance Institutions	10 million or its equivalent during a F.Y.
NBFC – IFCs	75% of their funds (o/s ECB plus proposed ECB) – hedge 75% of their currency risk exposure

Amount and Maturity

SECTOR	MAXIMUM AMOUNT (USD)
All eligible borrowers	Avail of ECB designated in INR from 'Foreign Equity Holders' as per the existing guidelines
NGOs engaged in micro finance activities	ECB designated in INR from overseas organizations and individuals as per the existing guidelines
All Eligible borrowers	<p>Up to USD 20 million or its equivalent - min. avg. maturity 3 yrs</p> <p>Above USD 20 million and up to USD 75 million - min. avg. maturity of 5 yrs</p> <p>Up to USD 20 million - can have call/put option - min. avg. maturity of 3 yrs is complied before exercising call/put option.</p>

All in Cost Ceilings

- All in cost includes
 - Rate of interest
 - Other fees and
 - exp. in foreign currency
- All in cost does not include:
 - commitment fee,
 - pre-payment fee
 - fees payable in Indian Rupees
 - Withholding tax in INR
- Rate of penal interest - not more than 2% of all-in-cost of ECB.

All in Cost Ceilings

Average Maturity Period	All-in-cost ceilings over 6 months LIBOR
3 yrs and up to 5 yrs	350 basis points
More than 5 yrs	500 basis points

Average Maturity Period

ABC Ltd. Loan amt. = USD 2 million Calculation by DAYS360

Date of drawal / repayment (1)	Drawdown (2)	Repayment (3)	Balance (4)	No. of days (5)	Product (4*5) / (loan amt*360)
11/05/2007	0.75	–	0.75	24	0.0250
05/06/2007	0.50	–	1.25	85	0.1476
31/08/2007	0.75	–	2.00	477	1.3250
27/12/2008	–	0.20	1.80	180	0.4500
27/06/2009	–	0.25	1.55	180	0.3875
27/12/2009	–	0.25	1.30	180	0.3250
27/06/2010	–	0.30	1.00	180	0.2500
27/12/2010	–	0.25	0.75	180	0.1875
27/06/2011	–	0.25	0.50	180	0.1250
27/12/2011	–	0.25	0.25	180	0.0625
27/06/2012	–	0.25	0.00	Avg. maturity	3.2851

End use of funds

- Import of capital goods
- Modernization/expansion of existing production units in real sector i.e. industrial sector including SME, infrastructure sector and specified service sector viz. hotel, hospital, software and miscellaneous service sector.
- Acquisition of PSU shares under disinvestment programme.
- Interest during construction period for companies in infrastructure sector
- Direct investment in JV/WOS abroad
- On-lending to self-help groups or for micro-credit or for bonafide micro finance activity by NGOs

End use of funds

- Companies in manufacturing and infrastructure sectors may import as part of import of capital goods
 - Import of services
 - Technical know-how
 - Payment of license fees

End use of funds

- ECB from direct foreign equity holders
 - Companies in mfg. infrastructure, hotels, hospitals and software sector
 - General corporate purpose (including working capital)
 - Minimum avg. maturity of 7 years
 - Minimum paid-up equity of 25% should be held directly by the lender
 - ECB to be used – as per ECB guidelines
 - Not to be used for on-lending to their group companies / step down subsidiaries in India
 - Repayment of the principal shall commence only after completion of minimum avg. maturity of 7 years
 - No prepayment will be allowed before maturity

End use not permitted

- For on-lending
- Investment in capital market.
- Acquiring an Indian company
- Real estate sector
- General corporate purpose
 - Working capital
 - Repayment of existing rupee loans
- Acquisition of land.

Guarantees

- Banks, FIs and NBFC not permitted to issue
 - Guarantee
 - Standby letter of credit
 - Letter of undertaking
 - Letter of comfort by banks
 - From India relating to ECB

Security

- Choice of security - left to the borrower.
- Creation of charge
 - Immoveable assets - Reg. 8 of Noti. 21.
 - Financial securities such as shares - Reg. 3 of Noti. 20.

Parking of ECB Proceeds

- Borrowers permitted
 - Keep ECB proceeds abroad or
 - Remit these funds to India
 - Pending utilization for permissible end-uses
- ECB rupee expenditure in India to be repatriated immediately to India
- ECB can be parked outside India only for foreign currency expenditure pending utilization
- ECB - not permitted - investment in capital markets, real estate or for inter-corporate lending
- ECB parked overseas - Invest in liquid assets
 - Deposits, Certificate of deposits, Treasury bills, etc.

Prepayment and Refinancing

- Prepayment
- Automatic Route – up to USD 500 million will
 - Subject to compliance with the minimum average maturity period as applicable to the loan.
- Refinancing
- Existing ECB may be refinanced by raising a fresh ECB subject to
 - Fresh ECB is raised at a lower all-in-cost ceiling
 - Outstanding maturity of original ECB is maintained.

Debt Servicing and Investigation

- Debt Servicing
 - AD bank – general permission to
 - Principal, interest and other charges
- Corporates under investigation
 - All entities under investigation / adjudications / appeals by law enforcing agencies are pending
 - are permitted to avail ECB
 - subject to conditions of ECB guidelines are complied with

Procedure

- Borrower can enter into loan agreement with the lender for raising under automatic route with RBI approval.
- Borrower to obtain loan registration number (LRN) from RBI
 - before drawing down the ECB



APPROVAL ROUTE

Approval Route - Eligible borrowers

- Cases outside the purview of automatic route and limits
- ECB for corporates in miscellaneous services is permitted only from direct / indirect equity holders and group companies.
- On-lending by EXIM Bank for specific purpose on case to case basis.
- Banks and FIs - participated in the textile or steel sector restructuring package

Approval Route - Eligible borrowers

- ECB with minimum avg. maturity of 5 years by NBFCs
 - 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.
- NBFC-IFCs permitted to avail beyond 75% of their owned funds for on-lending to infrastructure sector.
- NBFC-AFCs permitted to avail beyond 75% of their owned funds to finance the import of infrastructure equipment for leasing to infrastructure projects.
- FCCB with certain conditions
- SPV or any other entity notified by RBI - set up to finance infrastructure companies / projects exclusively.

Approval Route - Eligible borrowers

- Multi State Co-operative Societies engaged in manufacturing activity.
- SEZ developers can avail of ECBs for providing infrastructure facilities within SEZ
- Developers of National Manufacturing Investment Zone can avail of ECB for providing infrastructure facilities within SEZ.
- SIDBI can avail ECB for on-lending to MSME sector beyond 50% of their owned funds subject to ceiling of USD 500 million per financial year.
- Low cost affordable housing projects - Developers/builders / Housing finance companies / National housing.
- Holding Co's / Core Investment Companies for project use in SPV provided SPV is in infrastructure sector.
- Cases falling outside the purview of the automatic route limits and maturity period.

Recognised Lenders

- ECB can be raised from internationally recognized sources such as
 - International Banks
 - International capital markets
 - Multilateral financial institutions (IFC, ADB)
 - Regional financial institutions
 - Govt. owned financial institutions
 - Export credit agencies
 - Suppliers of equipments
 - Foreign collaborators
 - Foreign equity holders (other than OCB)
- Overseas branches / subsidiaries of India banks are not recognized as lender in case
 - End use is repayment / refinance of Rupee loans raised from domestic banking system

Recognised Lenders

- Foreign equity holder as per following conditions:

ECB Amount (USD)	Conditions
Up to 5 million	Minimum paid-up equity of 25% held directly by the lender (o/s and proposed ECB)
More than 5 million	Minimum paid-up equity of 25% held directly by the lender and ECB liability-equity ratio not exceeding 7:1 (o/s and proposed ECB)

Calculating of Equity and ECB liability

- Calculation of equity of Foreign Equity Holder in ECB liability-equity ratio
 - Paid up Capital
 - Free reserves (including share premium received in foreign currency) as per latest audited balance sheet.
- If more than one foreign equity holders in the borrowing company:
 - Portion of the share premium in foreign currency of the lender shall only be considered for calculating ECB liability-equity ratio
- ECB liability - all existing o/s and proposed liability from the **same** foreign equity holder lender will be taken.

Calculation of Equity – ECB liability

- A & B are foreign equity holder in Co. C in India holding 50% each.
- A wants to give USD 50,00,000 ECB to C
- Total equity of C is as follows:
- Paid up capital 20,00,000
- Share Premium (50% each) 40,00,000
- 60,00,000

Existing from A & B each is USD
25,00,000

How much ECB can A give to C Co.

Calculation of Equity – ECB liability

- Paid up equity held by A in C Co. is 50%.
 - A is eligible to lend
- For calculating the ratio:
 - ECB will be $25,00,000 + 50,00,000 = 75,00,000$
 - Equity = Paid up capital + Premium of A only to be considered
 - $= 20,00,000 + 20,00,000 = 40,00,000$
 - $75,00,000 / 40,00,000 = 1.88:1$
- Since it is within the limit of 7:1, A is eligible to give ECB of USD 50,00,000 to Co. C

End use of funds

- ECB can be used only for the following purpose:
 - Import of capital goods
 - Implementation of new projects
 - Modernization/expansion of existing production units in real sector i.e. industrial sector including SME, infrastructure sector.
- Acquisition of PSU shares under disinvestment programme.
- Interest during construction period for companies in infrastructure sector - will be capitalized and form part of project cost.
- ODI in JV/WOS abroad

End use of funds

- Refinancing of Bridge Finance (including buyers' / suppliers' credit) - for import of capital goods by companies in infrastructure sector. - RBI prior approval
 - Bridge finance will be replaced with a long term ECB.
- Mfg. and infrastructure Co' s are permitted to raise ECB for:
 - Import of services
 - Technical know-how
 - Payment of license fees

End use of funds

- ECB for general corporate purpose (includes working capital) from direct foreign equity holders -
 - Minimum avg. maturity of 7 years
 - Minimum paid-up equity of 25% should be held directly by the lender
 - ECB to be used only permitted as per ECB guidelines
 - Repayment of the principal shall commence only after completion of minimum avg. maturity of 7 years
 - No prepayment will be allowed before maturity

End use of funds

- Repayment of rupee loans availed of from domestic banking system
 - Indian companies in infrastructure (except power sector)
 - Permitted to utilise 25% of fresh ECB raised towards refinancing of rupee loan/s availed by them

End-uses not permitted

- ECB will not be utilised for the following purpose:
 - For on-lending or investment in capital market or
 - Acquiring a company (or part thereof) in India by a corporate except Infrastructure Finance Companies.
 - Real estate
 - General corporate purpose which includes working capital
 - Repayment of existing rupee loan
 - Inter-corporate lending
- ECB will be permitted if specifically stated in the ECB policy irrespective of the restrictions above

USD 10 billion scheme

- Indian companies in
 - Manufacturing
 - Infrastructure
 - Hotel (total project cost of INR 250 crore irrespective of geographical location of hotel)
- Avail of ECB for
 - Repayment of
 - outstanding rupee loans raised for capital exp. from domestic banking system
 - Fresh rupee capital expenditure
- Provided companies are
 - consistent foreign exchange earners during the past 3 F.Y.
 - Not in default list / caution list of RBI.

USD 10 billion scheme

- Overall ceiling for such ECBs shall be USD 10 billion
- Maximum ECB that can be availed by an individual company or a group as a whole
 - Under this scheme - USD 3 billion
- Maximum permissible ECB to be availed by an individual co.
 - Restricted to 75% of the avg. annual export earnings realized during the past 3 FY or
 - 50% of the highest foreign exchange earnings realized in any of the immediate past 3 F.Y
 - Whichever is higher

USD 10 billion scheme

- In case of SPV
 - Completed at least 1 year of existence from date of incorporation and
 - Do not have sufficient track record / past performance for 3 F.Y
 - Maximum permissible ECB to be availed will be up to 50% of the annual export earnings realized during the past year.
- Repayment of ECB will only be from foreign exchange earnings of the borrowing company.

USD 10 billion scheme - JV/ WOS outside India

- Established JV / WOS abroad have acquired assets can avail ECB for
 - Repayment of all term loans having avg. residual maturity of min. 5 years
 - Repayment of Credit facilities availed by Indian companies from domestic banks for overseas investment in JV / WOS in addition to capital expenditure.
 - ECB availed should be repaid out of forex earnings from overseas JV / WOS / assets.
 - Past earnings like dividend, repatriated profit, royalty, technical know-how fee, etc. from overseas JV/WOS/ assets will be reckoned as foreign exchange earnings under the scheme
 - ECB cannot be raised from overseas branches / subsidiaries of Indian banks

USD 10 billion scheme - JV/ WOS outside India

- Maximum permissible:
 - 75% of the avg. annual export earnings realized during the past 3 FY or
 - 75% of the assessment made about the avg. foreign exchange earnings potential for next 3 FY of the Indian companies from JV / WOS / assets abroad and certified either by:
 - Statutory auditors
 - Chartered Accountants
 - CPA
 - Category I Merchant Banker registered with SEBI
 - Investment Banker outside India registered with appropriate regulatory authority in the host country

ECB for low cost affordable housing

- Low cost affordable housing project
 - Means at least 60% of permissible FSI – units having maximum carpet area of 60 square meters.
 - Slum rehabilitation projects permitted under this scheme.
- Developers / builders may avail of ECB under this scheme provided:
 - They are companies registered under Companies Act, 1956
 - Have minimum 3 years experience in undertaking residential projects
 - Have good track record in terms of quality and delivery of the project
 - All necessary clearances from various bodies are available
 - Not defaulted in any of their financial commitment to banks / FIs or any other agencies
 - Project should not be under litigation.
 - ECB should be swapped into rupees for the entire maturity.

ECB for low cost affordable housing

- Housing Finance Companies (HFC) can avail of ECB
 - For financing prospective owners of low cost affordable housing units
 - HFC should be registered with National Housing Bank (NHB).
 - Minimum Net Owned Funds (NOF) of HFC for the past 3 F.Y should not be less than INR 300 crore.
 - Borrowing should be within overall borrowing limit of 16 times of NOF.
 - NPA should not exceed 2.5% of the advances
 - Maximum loan amt. sanctioned to the individual buyer will be capped at INR 25 lakh.
 - Cost of Individual housing unit shall not exceed INR 30 lakh.
 - ECB should be swapped into rupees for the entire maturity on fully hedged basis
 - Interest rate spread charged by them to the ultimate buyer is reasonable

ECB for low cost affordable housing

- NHB can raise ECB for financing of individual borrowers.
- If developer is not able to raise ECB directly
 - NHB is permitted to avail of ECB for on-lending to such developers which satisfy the conditions.
 - Interest rate spread will be set by RBI.
 - ECB will be utilized only for low cost affordable housing projects and should not be utilized for acquisition of land.
- Developers / builders / HFCs / NHB will not be permitted to raise FCCB under this scheme
- Aggregate limit of USD 1 billion each for FY. 2013-14 & 2014-15 is permitted under this scheme.

Guarantee

- Issue of
 - Guarantee
 - Standby letter of credit (SLC)
 - Letter of undertaking (L/U)
 - Letter of comfort (L/C)
 - By banks, FIs and NBFCs relating to ECB is not permitted
- Application for guarantee, SLC, L/C for ECB to SME, issue will be considered on merit subject to prudential norms.
- Application for guarantee, SLC, L/U & L/C for ECB to textile companies will be considered on merit subject to prudential norms.

Security

- Security to be provided by the borrower
 - Charge over immovable assets - Reg. 8 of Noti. 21
 - Charge on financial securities - Reg. 3 of Noti. 20
- AD can give no objection for creation of charge under FEMA

Parking of ECB Proceeds

- Borrowers permitted
 - Keep ECB proceeds abroad or
 - Remit these funds to India
 - Pending utilization for permissible end-uses
- ECB raised abroad meant for rupee expenditure in India
 - Should be repatriated immediately to India
- ECB can be parked outside India - utilise only for foreign currency expenditure.
- ECB parked overseas can be invested in the following liquid assets:
 - Deposits or certificate of deposit or other products offered by banks
 - Treasury bills or other monetary instruments of 1 year maturity
 - Deposits with overseas branches / subsidiaries of India banks abroad
 - To be liquidated when funds are required in India

Prepayment & Refinancing

- Prepayment of ECB beyond USD 500 million:
 - RBI approval
 - Stipulated minimum avg. maturity period applicable to the loan will have to be complied with.
- Refinancing / rescheduling of existing ECB
 - RBI approval
 - Existing ECB to be refinanced by raising a fresh ECB at a lower all-in-cost.
 - Avg. maturity period of the fresh ECB is more than the residual maturity of the existing ECB.

Conversion of ECB into Equity

- Conversion - available whether investment under automatic route or FIPB route.
- Foreign equity holding after such conversion - within the sectoral cap
- Pricing of shares - as per pricing guidelines under FEMA
- Conversion of ECB and lumpsum fee / Royalty into equity:
 - Exchange rate prevailing on the date of agreement or less for such conversion will be applied
 - Fair value of the equity shares to be worked out with reference to the date of conversion only.

Reporting requirements

- Copy of loan agreement not to be submitted
- For obtaining LRN:
 - Submit Form 83 in duplicate certified by CA/CS to designated bank
 - one copy forwarded to RBI by AD
 - Borrower can draw-down loan only after obtaining LRN from RBI
- Borrower to submit ECB-2 return certified by AD on monthly basis
 - ECB-2 to reach RBI within 7 working days from the close of the month

Change in Terms and Conditions of ECB

- Any changes in terms and conditions of ECB after obtaining LRN
 - RBI has delegated to designated AD to approve changes in terms and conditions of ECB.

Trade Credits for Imports into India

- Trade credits - credits extended for imports
 - directly by overseas supplier,
 - banks and
 - FIs
 - maturity up to 5 yrs
- Trade Credit includes
 - Suppliers' credit - credit for import into India extended by overseas suppliers
 - Buyers' credit - loans for imports into India arranged by the importer from a bank or FI outside India

Trade Credits for Imports into India

- AD permitted to approve trade credits:
 - Import up to USD 20 million per import transaction - maturity period up to 1 year from date of shipment.
 - Import of capital goods - trade credit up to USD 20 million per import transaction - maturity period of > 1 year < 5 years from the date of shipment.
- All-in-cost ceilings
 - Over 6 months LIBOR will be 350 basis points for all maturity period up to 5 years
 - Includes arranger fee, upfront fee, management fee, handling/processing charges, out of pocket and legal expenses.

Trade Credits for Imports into India

- Guarantee
- AD banks permitted to issue:
 - Letter of Credit
 - Guarantees
 - Letter of Undertaking (LoU)
 - Letter of Comport (LoC)
 - In favour of overseas supplier, bank and FI up to USD 20 million per transaction
 - Period up to 1 year - Import of non-capital goods
 - Period up to 3 years - Import of capital goods
 - Period should be co-terminus with the period of credit from date of shipment

Trade Credits for Imports into India

- Reporting Arrangements
- AD banks to submit FORM TC to RBI.
- Each trade credit be given a unique identification number of AD bank



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