

Corpsec Hotline

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EXTERNAL COMMERCIAL BORROWING GUIDELINES REVISED

The Reserve Bank of India ("RBI") vide notification A.P. (DIR Series) Circular No.60 has concretised the guidelines for transactions relating to External Commercial Borrowings ("ECB"). This notification which was issued on 31st January 2004 replaces the temporary measures relating to ECB announced on November 14, 2003.

Automatic Route

The RBI has directed that ECB for investment in real sector - industrial sector, especially infrastructure sector - in India, will be under the Automatic Route, i.e. will not require RBI/Government approval. The details of the guidelines under the Automatic Route are as follows:

- **Eligible borrowers:** Corporates registered under the Companies Act, 1956, except financial intermediaries, such as banks, Financial Institutions ("FIs"), housing finance companies and Non-Banking Financial Institutions ("NBFCs"), are eligible.
 - **Recognized Lenders:** Borrowers are permitted to raise ECB from internationally recognised sources including international banks, international capital markets, multilateral financial institutions, export credit agencies and suppliers of equipment, foreign collaborators and foreign equity holders.
 - **Amount and Maturity:**
 - a) ECB up to USD 20 million or equivalent with minimum average maturity of three years. All ECB up to USD 20 million can have call/put option provided the minimum average maturity of 3 years is complied before exercising the call/put option.
 - b) ECB above USD 20 million and up to USD 500 million or equivalent with minimum average maturity of five years
 - **All-in-cost ceilings:** The All-in-cost ceilings for ECB would be indicated from time to time. All-in-cost, includes rate of interest, other fees and expenses in foreign currency except commitment fee, pre-payment fee, and fees payable in Indian Rupees. Moreover, the payment of withholding tax in Indian Rupees is excluded for calculating the All-in-cost.
- | Minimum Average Maturity Period | All-in-cost Ceilings over six month LIBOR |
|----------------------------------|---|
| Three years and up to five years | 200 basis points |
| More than five years | 350 basis points |
- **End-Use:** ECB can be raised only for investment (such as import of capital goods, new projects, modernization/expansion of existing production units) in real sector - industrial sector including small and medium enterprises ("SME") and infrastructure sector in India, which has been defined as power, telecommunication, railways, road including bridges, ports, industrial parks and urban infrastructure (water supply, sanitation and sewage) projects. Utilization of ECB proceeds is also permitted in the first stage acquisition of shares in the disinvestment process and also in the mandatory second stage offer to the public under the Government's disinvestment programme of Public Sector Units shares. However, utilization of ECB proceeds is not permitted for on-lending or investment in capital market by corporates or in real estate.
 - **Guarantees:** Guarantee/standby letter of credit or letter of comfort by banks, FIs and NBFCs relating to ECB is not permitted.
 - **Security:** The choice of security to be provided to the lender/supplier is left to the borrower. However, creation of charge over immovable assets and financial securities, such as shares, in favour of overseas lender is subject to regulations relating to foreign direct investment into India and acquisition/transfer of immovable property in India
 - **Parking of ECB proceeds overseas:** Indian borrowers are required to bring such borrowings into the country only at the time of actual utilization of the funds.
 - **Prepayment:** Lenders are free to prepay ECB up to USD 100 million without prior approval of RBI, subject to compliance with the stipulated minimum average maturity period as applicable for the loan.
 - **Refinance of existing ECB:** Refinancing of existing ECB by raising fresh loans at lower cost is permitted, subject to the condition that the outstanding maturity of the original loan is maintained.
 - **Debt Servicing:** The designated Authorized Dealer ("AD") has the general permission to make remittances of installments of principal, interest and other charges in conformity with ECB guidelines issued by Government / RBI from time to time.

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The guidelines for ECB via the Approval Route are as follows:

- **Eligible borrowers:** FIs dealing exclusively with infrastructure or export finance, banks and financial institutions that have participated in the textile or steel sector restructuring package, subject to the extent of their investment in the package, amount of ECB availed for this purpose so far and assessment by RBI based on prudential norms and those cases that fall outside the purview of the Automatic Route limits on amounts and maturity period will be considered eligible borrowers.
- The guidelines with respect to **Recognized Lenders, All-in-cost ceilings** and **End Use** are the same as under the Automatic Route. However, as regards End Use, banks and FIs dealing exclusively with infrastructure or export finance or those that had participated in the textile or steel sector restructuring package as approved by the Government are also permitted to access ECB, subject to the extent of their investment in the package, amount of ECB availed for this purpose so far and assessment by RBI based on prudential norms
- **Guarantees:** Guarantee/standby letter of credit or letter of comfort by banks, FIs and NBFCs relating to ECB is not normally permitted. Applications for providing guarantee/standby letter of credit or letter of comfort by banks, FIs relating to ECB in the case of SME will be considered on merit subject to prudential norms.
- The guidelines with respect to **Security, Parking of ECB proceeds, Prepayment, Refinance of existing ECB** and **Debt Servicing** are the same as under the Automatic Route.
- **Empowered Committee:** An Empowered Committee of the RBI will now decide all cases coming under the approval route.

Procedures

The RBI has sought to simplify the procedural requirements under the guidelines and prescribed certain reporting arrangements and forms in connection therewith.

Foreign Currency Convertible Bonds ("FCCB")

The liberalization made for ECB has also extended to FCCB in all respects.

Source: The Reserve Bank of India: Notification A.P. (DIR Series) Circular No.60

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