cyril amarchand mangaldas
advocates & solicitors

EXTERNAL COMMERCIAL BORROWINGS - FRAMEWORK

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100 YEARS OF VALUES

Character, Competence & Commitment

WHO WE ARE

FIRM OVERVIEW | WHO WE ARE

cyril amarchand mangaldas
advocates & solicitors

Cyril Amarchand Mangaldas

- **India's Largest and Leading Law Firm**

  – Founded to continue the legacy of the 100-year old **Amarchand & Mangaldas & Suresh A. Shroff & Co. ("AMSS")**, whose **pre-eminence**, **experience** and **reputation** of almost a century has been unparalleled in the Indian legal fraternity.

  – Providing **nationwide, seamless, integrated, full-service** offerings.

  – **Largest** Indian law firm with over **650** lawyers, including **100** partners.

  – Pan-India presence with **offices** in **6 major cities** – Mumbai, New Delhi, Bengaluru, Hyderabad , Chennai and Ahmedabad.

  – Leading clients include domestic and foreign commercial enterprises, financial institutions, private equity funds, venture capital funds, start-ups and governmental and regulatory bodies.

ASIAN LEGAL BUSINESS ALB EMPLOYER OF CHOICE 2015

Asian Legal Business
Employer of Choice for 2017, 2016 & 2015

Dedicated Practice Groups

- Corporate
- Banking and Finance
- Capital Markets
- Infrastructure and Project Finance
- Dispute Resolution

Competition

Employment

Financial Regulatory

Investment Funds

Intellectual Property

Private Client

Real Estate

Tax

TMT

Bankruptcy

Investigations

Specialist industry groups: **Life Sciences, Oil & Gas, Financial Services, Corporate Advisory and cutting edge regulatory advice**

Dedicated International Desks servicing **Japan, Korea, China, USA, UK** and **Europe.**

Agenda

- Regulatory framework
- 3 Tracks under the ECB Framework
- Eligible Borrowers
- Recognized lenders
- Amount
- Pricing
- Tenor
- Use of proceeds
- Security
- Corporate Authorizations
- Masala bonds
- Tax Aspects of ECB

Regulatory Framework

- The Foreign Exchange Management Act, 1999 (**FEMA**)
- Foreign Exchange Management (Borrowing and Lending in Foreign Exchange) Regulations, 2000
- Master Direction - External Commercial Borrowings, Trade Credit, Borrowing and Lending in Foreign Currency by Authorised Dealers and Persons other than Authorised Dealers dated January 1, 2016(**ECB Master Directions**)

3 tracks under ECB framework

- Track I
  - Medium term foreign currency loans with minimum average maturity of 3/5 years.
  - Manufacturing sector foreign currency denominated ECBs with average maturity of 1 year
- Track II
  - Long term foreign currency loans with average maturity of 10 years
- Track III
  - Indian Rupee loans with minimum average maturity of 3/5 years.
  - Manufacturing sector INR denominated loans with minimum average maturity period of 1 year

Eligible Borrowers

The companies that can raise ECB under the three tracks are

- Track I – Companies in manufacturing, software development sectors, shipping, airlines, companies in infrastructure sector, NBFCs-AFCs, HFCs.
- Track II – in addition to companies under track I, REITS and InVITs.
- Track III – in addition to companies under track II, NBFCs-MFIs, NGOs engaged in micro-finance institutions, and companies involved in miscellaneous services such as R&D, training and logistics services.

Recognized Lenders

- Track I
  - International Banks, international capital markets, multilateral financial institutions, and government owned financial institutions, prudentially regulated financial entities.
  - Foreign equity holders.
  - Overseas branches / subsidiaries of Indian Banks.
- Track II
  - All entities under Track I, but for overseas branches/subsidiaries of Indian banks.
- Track III
  - All entities under Track I, but for overseas branches/subsidiaries of Indian banks, and NBFCs-MFI, other MFIs and NGOs.

Amount

- Infrastructure and manufacturing sectors, NBFC-IFCs, NBFC-AFCs, - up to USD 750 million or equivalent
- Software development sector - USD 200 million or equivalent
- Entities in micro finance activities – USD 100 million or equivalent
- The remaining entities can avail ECB up to USD 500 million or equivalent for remaining entities
- Any excess amounts of the above will require prior RBI approval

Pricing

- All-in-cost ceiling of 450 basis points over 6 month LIBOR or applicable benchmark for Track I and Track II ECB.
- For a Track III ECB, maximum spread of 450 basis points per annum over the prevailing yield of the Government of India securities of corresponding maturity.

Minimum Average Maturity Period

- Track I
  - 3-5 years for ECB upto USD 50 million;
  - 3 years for ECB raised by companies such as companies in the infrastructure sector, NBFC-IFCs, NBFC-AFCs and HFCs.
  - 1 year for ECB raised by companies in manufacturing sector upto USD 50 million
- Track II
  - 10 years irrespective of amount
- Track III
  - Same as track I

Use of proceeds

- Only negative list
- Permitted — general corporate purpose, refinancing, on-lending/downstream by way of loan (not shares)
- Prohibited
  - Real estate activities (other than affordable housing projects or development of integrated townships)
  - Investment in capital markets and domestic equity investments
  - Activities prohibited under FDI regulations
  - On-lending for the above
  - Purchase of land

Security

- Security - AD NOC
  - Personal guarantee
  - Guarantee by banks and FIs not allowed
  - Corporate guarantee
  - Credit enhanced / guaranteed / insured by overseas party / parties - fulfils eligible lender criteria international banks, multilaterals, export credit agencies, long term investors — "prudentially regulated financial entities", pension funds, insurance companies

Corporate Authorisations

- Shareholders resolution u/s 180(1)(a)
  - Authorising Issuer to create security
- Shareholders resolution u/s 180(1)(c)
  - Specifying borrowing limits for Issuer
- Board Resolution of the board of directors u/s 179 (3)(c)/(f) authorising
  - Issue - up to an aggregate amount
  - Creation of security
  - Appointment of committee of directors to take all action and finalise terms, allotment

Masala Bonds

- Debt instrument, issued outside India, denominated in Indian rupee
- Foreign exchange risk borne by the investor, compared to being borne by the issuer in a regular foreign bond
- Consent of the RBI required before making any proposal for a rupee denominated issuance of bonds
- Can be issued by any corporate or body corporate, including REITs and InVITs
- Can be subscribed by a large pool of investors

Masala bonds

- Tenor
  - Minimum original maturity period for amounts raised upto USD 50 million – 3 years
  - For bonds raised above USD 50 million per financial year – 5 years.
  - Call and put option permitted
- Pricing –all-in-cost ceiling for masala bonds is 450 basis points over the prevailing yield of the Government of India securities of corresponding maturity.
- Use of proceeds - same negative list as for the three tracks

Tax aspects of ECB

- Tax payable on interest paid to non-residents at the rate as prescribed in section 115A r/w 194LC of the Income Tax Act, 1961 –withholding tax rate of 5%, subject to certain conditions
- No tax if proceeds of the issuance are used for business carried on by the Issuer outside India.

Withholding Tax for masala bonds

- Interest paid on masala bonds to non-residents investors is taxable at the rate of 5% –withholding tax rate of 5%.
- September 17, 2018 – notification by the Central Board of Direct Taxes - No tax to be paid/deducted on interest payable by an Indian company or a business trust to a non-resident, including a foreign company, in respect of masala bonds, issued during the period from September 17, 2018 to March 31, 2019. (*The legislative amendments in the Income Tax Act yet to be introduced, which is expected shortly*)
- Capital gains, arising pursuant to any transfer of a masala bond, made outside India by a non-resident to another non-resident, are not subject to tax in India
- Any gains arising on account of appreciation of the Rupee against a foreign currency at the time of redemption of masala bond held by such non-resident investor, shall be ignored for the computation of full value of consideration.

Thank You