Borrowing and Lending in Rupees and Foreign Currency

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Overview

- Modes of Foreign Currency Borrowings under FEMA 3
  - ECB Guidelines
  - Security and Guarantees
  - Trade Credits under ECB
  - ECB for Startups
- Modes of Rupee Borrowings under FEMA
  - Masala Bonds
  - NCD investment by NRIs and PIOs (FEMA 4)
  - FPI Investment in Corporate Debt Securities (FEMA 20)

Borrowing and Lending in Foreign Currency

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What is an ECB?

Commercial debt availed by eligible Indian entities from recognized non-resident lenders within the parameters prescribed by the RBI

Loans

FCCBs

Buyer's credit

FCEBs (approval route)

Supplier's credit

Securitized instruments

Financial leases

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Routes

Automatic Route

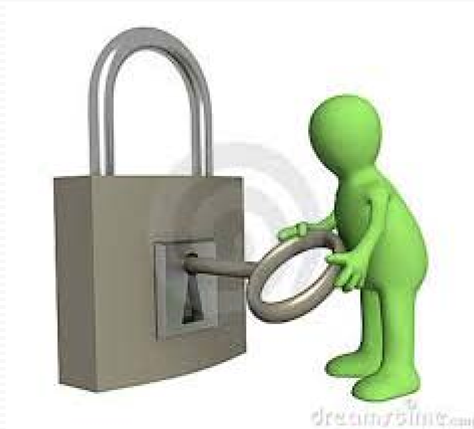
No prior approval of RBI required to avail an ECB. AD Bank to determine the case.

Only a Loan Registration Number needed to borrow

Prior approval of RBI required before drawdown

Approval is discretionary and granted on a case to case basis

Approval Route



Tracks and Parameters

ECBs may be availed under 3 tracks

	ECB Routes
Track 1	**Medium term** - FCY borrowing with minimum average maturity of 3 / 5 years
Track 2	**Long term** - FCY borrowing with minimum average maturity of 10 years
Track 3	**INR ECBs** - borrowing with minimum average maturity of 3 / 5 years

Determining parameters

1. Recognised Lenders/Investors
2. Eligible Borrowers
3. End use prescriptions
4. All-in-Cost
5. Minimum Average Maturity Period

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Source of Funds: Recognized Lenders/Investors

Track I	Track II	Track III
• International banks • International capital markets • Specified financial institutions • ECA • Suppliers of equipment • Foreign equity holders • Overseas long term investors • Overseas branches / subsidiaries of Indian banks	• All lenders under Track I save overseas branches / subsidiaries of Indian banks	• All lenders under Track I save overseas branches / subsidiaries of Indian banks • Overseas organisations and individuals can lend to NBFCs-MFIs, other eligible MFIs, not for profit companies and NGOs

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Eligible Borrowers

Track I	Track II	Track III
• Companies in manufacturing and software development • Shipping and airlines companies • SIDBI • Units in SEZs • Infra companies and infra related NBFC-IFCs, NBFC-AFCs, Holding Companies and CICs • Exim Bank for on-lending (only under the approval route)	• All borrowers under Track I • REITs • INVITs	• All borrowers under Track II • All NBFCs coming under the regulatory purview of RBI • Following entities engaged in micro finance: o NBFCs-MFIs o Registered not for profit companies o Registered societies, trusts and cooperatives o NGOs only micro finance activity. • Companies in R&D, training (other than educational institutes), supporting infrastructure, providing logistics services • Developers of SEZs/ National Manufacturing and Investment Zones (NMIZs)

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End Use Prescriptions

Track I	Track II	Track III
• Capex for import of capital goods • Local sourcing of capital goods • New projects/ expansion and modernisation of existing units • Overseas direct investment in JV/WOS abroad • Investment in govt. disinvestment • Refinancing of an ECB / trade credit • General corporate purpose – for equity holders'/ group company's lending only • Payment of capital goods already shipped/imported but unpaid • SIDBI – on-lending to MSME only • Shipping and airlines company – import of vessels and aircrafts only • NBFC – IFCs and NBFC AFCs – financing infrastructure only • Holding Companies and CICs – on lending to SPVs only • SEZ – own requirements only • Import of 2^{nd} hand goods and on lending by EXIM Bank (under approval route)	• All purposes excluding the following: o Real estate activities o Investing in capital market o Using the proceeds for equity investment domestically; o Lending to other entities with any of the above objectives; o Purchase of land	• NBFCs can use ECB proceeds only for o on-lending for any permitted activities, o providing hypothecated loans to domestic entities for acquisition of capital goods/equipment; and o providing capital goods/equipment to domestic entities by way of lease and hire-purchases • Developers of SEZs/ NMIZs can raise ECB only for providing infrastructure facilities within SEZ/ NMIZ • NBFCs-MFI, other eligible MFIs, NGOs and not for profit companies registered under the Companies Act, only for on-lending to self help groups or for micro credit or for *bona fide* micro finance activity including capacity building. • Real estate activities, Investing in capital market, utilizing the proceeds for equity investment domestically; On-lending to other entities with aforesaid objectives; and purchase of land (under approval route)

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All-in-cost

All-in-cost

Includes rate of interest, other fees, expenses, charges, guarantee fees whether paid in foreign currency or Indian Rupees (INR) but will not include commitment fees, pre-payment fees / charges, withholding tax payable in INR. In the case of fixed rate loans, the swap cost plus spread should be equivalent of the floating rate plus the applicable spread

Track I	Track II	Track III
All-in-cost ceiling over 6 month LIBOR		
• 300 basis points per annum over 6 months LIBOR/ applicable bench mark for ECBs with average maturity of upto 5 years • 450 basis points per annum over 6 months LIBOR/ applicable bench mark for ECBs with average maturity of more than 5 years • Default interest – max 2%	• 500 basis points • Default interest – max 2%	• All-in-cost should be commensurate with the market conditions

Minimum Average Maturity Period

Track I	Track II	Track III
• 3 years for ECB upto USD 50 million or its equivalent • 5 years for ECB beyond USD 50 million or its equivalent • 5 years for CICs, NBFCs- IFC etc irrespective of the amount of borrowing. • 5 years for FCCBs/FCEBs irrespective of the amount of borrowing.	• 10 years	• Same as Track I

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Other Noteworthy Points

Currency conversion

- Freely permitted

Parking of ECB proceeds

- ECBs for forex expenditure may be invested in specified liquid assets abroad pending utilization
- ECBs for INR expenditure must be repatriated to India. They may be parked in term deposits with AD banks for a maximum of 12 months in unencumbered position

Conversion into equity

- Company under the automatic route for FDI or FIPB approval has been obtained
- Foreign equity holding after conversion stays within the sectoral cap
- Pricing guidelines issued under FEMA are followed
- Reporting requirement is fulfilled
- Applicable prudential guidelines issued by RBI on restructuring are complied
- Consent of other lenders to the Borrower or at least information regarding the conversion is exchanged.

Hedging Requirement

- Mandatory for NBFCs- IFC/CIC. Entities raising ECB under the provisions of Tracks I and II are required to follow the guidelines for hedging issued, if any, by the concerned sectoral or prudential regulator in respect of foreign currency exposure.

Entities under investigation for violation of FEMA

- Entities may raise ECBs if otherwise eligible
- Entity must inform the AD/ RBI

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Amounts and Limits

Individual borrower limits

USD 750 mio	Companies in infrastructure and manufacturing, NBFC-IFCs, NBFC-AFCs, Holding Companies and CIC
USD 200 mio	Companies in software development
USD 100 mio	Companies in micro finance
USD 500 mio	All other eligible borrowers

Additionally

ECBs from direct foreign equity holders

Automatic route	• ECB liability: equity ratio of upto 4:1 • Exempt threshold: USD 5 mio
Approval route	• ECB liability: equity ratio of upto 7:1 • Exempt threshold: USD 5 mio

Restructuring an ECB

Subject to compliance with the ECB guidelines, ADs may permit:

- Change in drawdown / repayment schedule
- Changes in all-in-cost
- Reduction in the amount of ECB
- Change in currency of ECB
- Change in purpose of ECB
- Change in name of Borrower
- Transfer of ECB from one borrower to another entity on account of merger/demerger/ amalgamation/ acquisition
- Prepayment of ECB
- Change in recognized lender
- Change in name of lender
- Change in AD Bank
- Cancellation of LRN
- Change in end-use of ECB proceeds
- Extension of matured but unpaid ECB

Refinancing an ECB

Subject to compliance with the ECB guidelines, ADs may permit refinancing of an ECB:

- Outstanding maturity of the existing ECB must not be reduced
- New ECB must be at a lower all-in-cost
- Indian banks are now permitted to partially or fully refinance existing ECBs of highly rated (AAA) corporates as well as Navratna and Maharatna PSUs, subject to above conditions

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Security and Guarantees for ECB

Security

Creation of security requires AD NOC

Moveable Asset

- The extent of the charge is restricted to outstanding claims against the borrower
- Encumbered moveable assets may be taken subject to NOC from domestic lenders if any.

Financial Securities

- Transfer of security is subject to FDI policy

Immoveable Property

- Subject to conditions compliances under Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000.
- AD NOC not a permission to acquire immoveable assets in India by the ECB lender / security trustee
- Upon enforcement, the asset must be sold to a person resident in India only and the proceeds may be repatriated to pay the outstanding ECB

Guarantee

Issuance of guarantee requires AD NOC

Guarantee

- Board resolution of corporate guarantor specifying names of authorized officials
- Specific requests from individuals to issue personal guarantee with details of ECB
- Compliance with Foreign Exchange Management (Guarantees) Regulations, 2000.
- Overseas guarantor must be a recognized lender
- No guarantees permitted by banks/NBFC

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Trade Credits

Trade Credits under ECB

What is import trade credit

Facilitates trade of goods by postponing the payment obligation. Imports to be in compliance with foreign trade policy.

- Buyer's Credit
- Supplier's Credit

Automatic Route: Upto USD 20 mio per import transaction

Approval Route: More than USD 20 mio per import transaction

Maturity Period:
- Same for approval and automatic route
- Capital goods: Upto 5 years
  - At least 6 months ab initio contract for 5 years trade credit
- Non-capital goods: Upto 1 year from date of shipment or the operating cycle, whichever is lower
- No rollover or extension

Trade Credits under ECB

All-in-cost

350 basis points over 6 month LIBOR

Guarantee

- Only AD banks may issue guarantee of upto USD 20 mio per import transaction
- Non capital goods: maximum 1 year
- Capital goods: maximum 3 years
- Period reckoned from date of shipment and the guarantee should be co-terminus with period of trade credit

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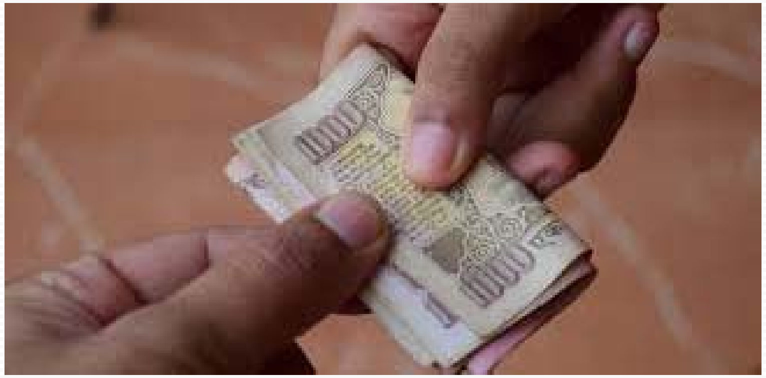
ECB for Startups

Salient Features

- **Route**: Under automatic route through AD Bank
- **Eligible Borrowers**: Startups recognized by central government
- **Eligible Investors/ Lenders:** Resident of FATF jurisdiction or member of FATF style regional bodies, but excludes overseas branch/subs of Indian banks or overseas WOS/JV of Indian entity
- **Forms:** Loans, or non-convertible, optionally convertible or partially convertible preference shares
- **Amount:** USD 3 million or equivalent per FY
- **Minimum Average Maturity Period:** 3 years
- **All in cost**: As mutually agreed between the borrower and lender/ investor
- **End Uses**: Any expenditure for the business of the startup
- **Conversion of Debt to Equity**: freely permitted subject to Regulations applicable for foreign investment in Startups

Borrowing and Lending in Rupees By Indian Companies



Masala Bonds

Masala Bonds

Masala Bonds

- Issuance only upon approval from Foreign Exchange Department (FED), RBI upon request forwarded only through AD Bank (whether under whether under Automatic Route or Approval route)
- Eligible for any corporate or body corporate, REITs, INVITs and Indian Banks
- Investors include residents of FATF compliant jurisdiction or whose securities market regulator is signatory to the International Organisation of Securities Commissions (IOSCO), Multilateral and regional financial institutions (where India is a member country), but exclude related parties
- Underwriting of the issue by Indian banks allowed but not by overseas branches/ subsidiaries
- Minimum maturity - 3 years for Masala Bonds upto USD 50 million in a financial year, and 5 years for bonds above USD 50 million in a financial year,
- All-in-cost – 300 bps over prevailing yield of G-Sec of corresponding maturity
- Only negative list for end-use
- Reporting to FED through AD Bank

FEMA 4 - Rupee NCDs

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Salient Features

- **NCDs:** A fixed income debt instrument with no convertibility option attached
- **Forms**: NCDs by way of public offer.
- **Eligible Borrowers**: A company incorporated in India.
- **Eligible Investors**: Non-Resident Indian, Person of Indian Origin.
- **Rate of Interest**: PLR of SBI (prevailing as on date of passing of special resolution for issuance by the borrower) + 300 basis points.
- **Period of redemption**: not less than 3 years.
- **End Uses**: (i) Any investment, whether by way of capital or otherwise, in any company or partnership firm or proprietorship concern or any entity, whether incorporated or not; or (ii) re-lending.

Salient Features

- **Restriction on utilization**: (i) Not for carrying out agricultural, plantation, real estate business; (ii) trading in TDRs; (iii) not act as a Nidhi company; and (iv) business of chit fund.

- **Issuance of NCDs on repatriation basis**: (i) Percentage of NCDs issued to NRIs/PIOs to total-paid up value of each series of NCDs issued shall not exceed the ceiling prescribed under the FDI Policy; and (ii) amount of investment received by way of remittance from outside India through normal banking channel or in NRE/FCNR account maintained with the AD bank or authorized bank in India.

- **Issuance of NCDs on non-repatriation basis:** (i) amount of investment received by way of remittance from outside India through normal banking channel or in NRE/FCNR account maintained with the AD bank or authorized bank in India; and (ii) investment from funds held in NRSR account, the interest on such NCDs shall not be repatriable outside India and the maturity proceeds and the interest to be credited to NRSR account.

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Investment by Foreign Portfolio Investors in Corporate Debt Securities

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Applicable Laws

- **Companies Act, 2013**:
  - Section 71 (Debentures)
  - Section 42 (Private Placement)
  - Section 179 (Powers of Board)
  - Section 180 (Restrictions on powers of Board)

- **Rules under Companies Act, 2013**:
  - Companies (Acceptance of Deposits) Rules, 2014 ("**Companies Deposit Rules**")
  - Companies (Prospectus and Allotment of Securities) Rules, 2014 ("**Companies PAS Rules**")
  - Companies (Share Capital and Debentures) Rules, 2014 ("**Companies SCD Rules**")

Applicable Laws

- **SEBI Related**:
  - SEBI (Issue and Listing of Debt Securities) Regulations, 2008 ("**SEBI Debt Listing Regulations**")
  - SEBI (Debenture Trustees) Regulations, 1993
  - SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015
  - Listing Agreements
  - SEBI (Foreign Portfolio Investors) Regulations, 2014
  - Others SEBI Circulars (e.g. Corporate Debt Limits; Equity Linked Debentures)
- **FEMA**:
  - FEM (Transfer or issue of Security by a Person Resident Outside India) Regulations, 2000 ("**FEMA 20**")
  - Other RBI Circulars (e.g. residual maturity / tenor of NCDs being subscribed to / purchased by FPI)
- **Stamp Duty**:
  - Indian Stamp Act, 1899
  - Relevant State Stamp Laws

Process of NCD issuance

- Corporate Authorizations
- Credit Rating
- Debenture Trustee appointment
- Obtaining an ISIN number
- Tripartite arrangement with a R&T agent
- Execution of DTD + IM
- IM Circulation & Application Forms
- In Principle Listing Approval
- Lender consents and other consents
- Allotment Resolution
- Submitting MCF to Depository
- Crediting the demat accounts of the investors with the NCDs
- Listing of debentures (15 days)
- ROC filings (Form PAS -5 , PAS -3, CHG-9)

Thank You