

EXTERNAL COMMERCIAL BORROWINGS (ECB)

RELEASE OF FOREIGN EXCHANGE BY AUTHORISED DEALERS RELEASE OF FOREIGN EXCHANGE BY AUTHORISED DEALERS

A.1 General

- (a) External Commercial Borrowings (ECB) refer to commercial loans [in the form of bank loans, buyers' credit, suppliers' credit, securitized instruments (e.g. floating rate notes and fixed rate bonds)] availed from non-resident lenders with minimum average maturity of 3 years.
- (b) Foreign Currency Convertible bonds (FCCBs) mean a bond issued by an Indian company expressed in foreign currency, and the principal and interest in respect of which is payable in foreign currency. Further the bonds are required to be issued in accordance with the scheme viz., "Issue of Foreign Currency convertible bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993", and subscribed by a non-resident in foreign currency and convertible into ordinary shares of the issuing company in any manner, either in whole, or in part, on the basis of any equity related warrants attached to debt instruments. The policy for ECB is also applicable to FCCBs. The issue of FCCBs is also required to adhere to the provisions of Notification FEMA No. 120/RB-2004 dated July 7, 2004 as amended from time to time.
- (c) ECB can be accessed under two routes, viz., (i) Automatic Route outlined in

Paragraph I

(A) and (ii) Approval Route outlined in paragraph I

(B). (d) ECB for investment in real sector – industrial sector, especially infrastructure sector-in India, are under Automatic Route, i.e. Do not require RBI/Government approval. In case of doubt as regards eligibility to access Automatic Route, applicants may take recourse to the Approval Route.

I. (A) AUTOMATIC ROUTE

(i) Eligible borrowers

- (a) Corporate (registered under the companies Act except financial intermediaries (such as banks, financial institutions (FIs), housing finance companies and NBFCs) are eligible to raise ECB. Individuals, Trusts and Non-Profit making Organizations are not eligible to raise ECB.
- (b) Units in Special Economic Zones (SEZ) are allowed to raise ECB for their own requirement. However, they cannot transfer or on-lend ECB funds to sister concerns or any unit in the Domestic Tariff Area.

(ii) Recognized lenders

Borrowers can raise ECB from internationally recognized sources such as (i) international banks, (ii) international capital markets, (iii) multilateral financial institutions (such as IFC, ADB, CDC, etc.), (iv) export credit agencies, (v) suppliers of equipment, (vi) foreign collaborators and (vii) foreign equity

holders (other than erstwhile OCBs). A “foreign equity holder” to be eligible as “recognized lender” under the automatic route would require minimum holding of equity in the borrower company as set out below:

- (i) For ECB up to USD 5 million – minimum equity of 25 per cent held directly by the lender.
- (ii) For ECB more than USD 5 million – minimum equity of 25 per cent held directly by the lender and debt-equity ratio not exceeding 4:1 (i.e. the proposed ECB not exceeding four times the direct foreign equity holding).

(iii) Amount and Maturity

- (a) The maximum amount of ECB which can be raised by a corporate is USD 500 million or equivalent during a financial year.
- (b) ECB up to USD 20 million or equivalent in a financial year with minimum average maturity of three years.
- (c) ECB above USD 20 million and upto USD 500 million or equivalent with a minimum average maturity average maturity of five years.
- (d) ECB upto USD 20 million can have call / put option provided the minimum average maturity of three years is complied with before exercising call / put option.

(iv). All-in-cost ceilings

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.

The all-in-cost ceilings for ECB are reviewed from time to time. The following ceilings are valid till reviewed:

Average Maturity Period	All-in-cost Ceilings over 6 month LIBOR*
Three years and upto five years	200 basis points
More than five years	350 basis points * for the respective currency of borrowing or applicable benchmark

(v) End-use

- (a) Investment e.g. import of capital goods (as classified by DGFT in the Foreign Trade Policy), by new or existing production units, in real sector- industrial sector including small and medium enterprises (SME) and infrastructure sector – in India. Infrastructure sector is defined as (i) power, (ii) telecommunication, (iii) railways, (iv) road including bridges, (v) sea port and airport, (vi) industrial parks, and (vii) urban infrastructure (water supply, sanitation and sewage projects);
 - (b) Overseas direct investment in Joint Ventures (JV) / Wholly Owned Subsidiaries (WOS) subject to the existing guidelines on Indian Direct Investment in JV/WOS abroad.
- vi) Ends-users not permitted**
- (a) Utilization of ECB proceeds is not permitted for on-lending or investment in capital market or acquiring a company (or a part thereof) in India by a corporate,
 - (b) Utilization of ECB proceeds is not permitted in real estate,
 - (c) Utilization of ECB proceeds is not permitted for working capital, general

Corporate purpose and repayment of existing Rupee loans.

vii) Guarantees

Issuance of guarantee, standby letter of credit, letter of undertaking or letter of comfort by banks, Financial Institutions and Non-Banking Financial Companies (NBFCs) relating to ECB is not permitted.

viii) 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 favor of the overseas lender is subject to Regulation 8 of Notification No. FEMA 21/RB-2000 dated May 3, 2000 and Regulation 3 of Notification No. FEMA 20/RB-2000 dated May 3, 2000 respectively, as amended from time to time.

ix) Parking of ECB proceed overseas

ECB raised for foreign currency expenditure for permissible end-uses shall be parked overseas and not to be remitted to India. ECB proceeds parked overseas can be invested in the following liquid assets (a) deposits or Certificate of Deposit or other products offered by banks rated not less than AA (-) by Standard and Poor / Fitch IBCA or Aa3 by Moody's; (b) deposits with overseas branch of an Authorised Dealer in India; and (c) Treasury bills and other monetary instruments of one year maturity having minimum rating as indicated above. The funds should be invested in such a way that the investments can be liquidated as and when funds are required by the borrower in India.

x) Prepayment

Prepayment of ECB upto USD 500 million may be allowed by AD banks without prior approval of RBI subject to compliance with the stipulated minimum average maturity period as applicable to the loan.

xi) 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.

xii) Debt Servicing

The designated Authorised Dealer (AD bank) has the general permission to make remittances of installments of principal, interest and other charges in conformity with ECB guidelines issued by Government / Reserve Bank of India from time to time.

xiii) Procedure

Borrowers may enter into loan agreement complying with ECB guidelines with recognized lender for raising ECB under Automatic Route without prior approval of RBI. The borrower must obtain a Loan Registration Number (LRN) from the Reserve Bank of India before drawing down the ECB. The procedure for obtaining LRN is detailed in para II (i) (b).

I. (B) APPROVAL ROUTE i). Eligible

Borrowers

The following types of proposals for ECB are covered under the Approval Route

- a). Financial institutions dealing exclusively with infrastructure or export finance such as IDFC, IL&FS, Power Finance Corporation, Power Trading Corporation, IRCON and EXIM Bank are considered on a case by case basis.
- b). Banks and financial institutions which had participated in the textile or steel sector restructuring package as approved by the Government are also permitted to the extent of their investment in the package and assessment by Reserve Bank based on prudential norms. Any ECB availed for this purpose so far will be deducted from their entitlement.
- c). ECB with minimum average maturity of 5 years by Non-Banking Financial Companies (NBFCs) from multilateral financial institutions, reputable regional financial institution, official export credit agencies and international banks to finance import of infrastructure equipment for leasing to infrastructure projects.
- d). Foreign Currency Convertible Bonds (FCCBs) by housing finance companies satisfying the following minimum criteria: (i) the minimum net worth of the financial intermediary during the previous three years shall not be less than Rs.500 cores, (ii) a listing on the BSE or NSE, (iii) minimum size of FCCB is USD 100 million, (iv) the applicant should submit the purpose / plan of utilization of funds.
- e). Special Purpose Vehicles, or any other entity notified by the Reserve Bank, set upto finance infrastructure companies / projects exclusively, will be treated as Financial Institutions and ECB by such entities will be considered under the Approval Route.
- f). Multi-State Co-operate Societies engaged in manufacturing activity satisfying the following criteria (i) the Co-operative Society is financially solvent and (ii) the Co-operative Society submits its up-to-date audited balance sheet.
- g). Corporate engaged in industrial sector and infrastructure sector in India can avail ECB for Rupee expenditure for permissible end-uses.
- h). Non-Government Organizations (NGOs) engaged in micro finance activities are eligible to avail ECB for Rupee expenditure for permissible end-uses. Such NGO (i) should have a satisfactory borrowing relationship for at least 3 years with a scheduled commercial bank authorised to deal in foreign exchange and (ii) would require a certificate of due diligence on 'fit and proper' status of the board / committee of management of the borrowing entity from designated AD Bank.
- i). Corporate in services sector viz. hotels, hospitals and software companies can avail ECB for import of capital goods.
- j). Cases falling outside the purview of the automatic route limits and maturity period indicated at paragraph I A (iii).
- ii). Recognized Lenders**
- (a) Borrowers can raise ECB from internationally recognized sources such as (i) international banks, (ii) international capital markets, (iii) multilateral financial institutions (such as IFC, ADB, CDC, etc.), (iv) export credit agencies, (v) suppliers' of equipment, (vi) foreign collaborators and (vii) foreign equity holders (other than erstwhile OCBs)
- (b) From 'foreign equity holder' where the minimum equity held directly by the

Foreign equity lender is 25 per cent but debt-equity ratio exceeds 4:1 (i.e. the proposed ECB exceeds four times the direct foreign equity holding). (c) Overseas organizations and individuals complying with following safeguards may provide ECB to Non-Government Organizations (NGOs) engaged in micro finance activities.

(i) Overseas Organizations proposing to lend ECB would have to furnish a Certificate of due diligence from an overseas bank which in turn is subject to regulation of host-country regulator and adheres to Financial Action Task Force (FATF) guidelines to the AD bank of the borrower. The certificate of due diligence should comprise the following (i) that the lender maintains an account with the bank for at least a period of two years, (ii) that the lending entity is organized as per the local law and held in good esteem by the business / local community and (iii) that there is no criminal action pending against it. (ii) Individual Lender has to obtain a certificate of due diligence from an overseas bank indicating that the lender maintains an account with the bank for at least a period of two years. Other evidence / documents such as audited statement of account and income tax return which the overseas lender may furnish need to be certified and forwarded by the overseas bank. Individual lenders from countries wherein banks are not required to adhere to Know Your Customer (KYC) guidelines are not eligible to extend ECB.

iii). Amount and Maturity

- (a) Corporate can avail of ECB of an additional amount of USD 250 million with average maturity of more than 10 years under the approval route, over and above the existing limit of USD 500 million under the automatic route, during a financial year. Other ECB criteria such as end-use, all-in-cost ceiling, recognized lender, etc., need to be complied with. Prepayment and call / put options, however, would not be permissible for such ECB upto a period of 10 years.
- (b) Corporate in infrastructure sector {as defined in paragraph 1(A) (v) (a)} can avail ECB up to USD 100 million and Corporate in industrial sector can avail ECB up to USD 50 million for Rupee capital expenditure for permissible end-uses within the overall limit of USD 500 million per borrower, per financial year, under Automatic Route.
- (c) NGOs engaged in micro finance activities can raise ECB up to USD 5 million during a financial year. Designated AD bank has to ensure that at the time of drawdown the forex exposure of the borrower is hedged.
- (d) Corporate in the services sector viz. hotels, hospitals and software companies can avail ECB up to USD 100 million, per borrower, per financial year, for import of capital goods.

iv). All-in-cost ceilings

All-in-cost includes rate of interest, other fees and expenses in foreign currency except commitment fee, pre-payment fee, and fee payable in Indian Rupees. Moreover, the payment of withholding tax in Indian Rupees is excluded for calculating the all-in-cost.

The current all-in-cost ceilings are as under: The following ceilings are valid till reviewed:

Average Maturity Period	All-in-cost Ceilings over 6 month LIBOR*
Three years and upto five years	200 basis points
More than five years	350 basis points

* For the respective currency of borrowing or applicable benchmark

v). End-Use

- (a) Investment [such as import of capital goods (as classified by DGFT in the Foreign Trade Policy), implementation of new projects, modernization / expansion of existing production units] in real sector – industrial sector including small and medium enterprises (SME) and infrastructure sector – in India. Infrastructure sector is defined as (i) power, (ii) telecommunication, (iii) railways, (iv) road including bridges, (v) sea port and airport, (vi) industrial parks and (vii) urban infrastructure (water supply, sanitation and sewage projects);
- (b) Overseas direct investment in Joint Ventures (JV) / Wholly Owned Subsidiaries (WOS) subject to the existing guidelines on Indian Direct investment in JV/WOS abroad.
- (c) 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 PSU shares.
- (d) Import of capital goods by Corporate in the service sector, viz., hotels, hospitals and software companies.

vi). End-uses not permitted

- (a) Utilization of ECB proceeds is not permitted for on-lending or investment in capital market or acquiring a company (or a part thereof) in India by a corporate except banks and financial institutions eligible under paragraph I(B)(i)(A) and I(b)(i)(b),
- (b) Utilization of ECB proceeds is not permitted in real estate,
- (c) Utilization of ECB proceeds is not permitted for working capital, general corporate purpose and repayment of existing Rupee loans

vii). Guarantee

Issuance of guarantee standby letter of credit, letter of undertaking or letter of comfort by banks, financial institutions and NBFCs relating to ECB is not normally permitted. Applications for providing guarantee / standby letter of credit or letter of comfort by banks, financial institutions relating to ECB in the case of SME will be considered on merit subject to prudential norms. With a view to facilitating capacity expansion and technological up gradation in Indian Textile industry issue of guarantees, standby letters of credit, letters of undertaking and letters of comfort by banks in respect of ECB by textile companies for modernization or expansion of textile units will be considered under the Approval Route subject to prudential norms.

viii). 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 the overseas lender are subject to Regulation 8 of Notification No. FEMA 21/RB-2000 dated May 3, 2000 and Regulation 3 of Notification No. FEMA 20/RB-2000 dated May 3, 2000 as amended from time to time, respectively.

ix). Parking of ECB proceeds overseas
ECB raised for foreign currency expenditure for permissible end-uses shall be parked overseas and not remitted to India and ECB raised for Rupee expenditure for permissible end-uses shall be parked overseas until actual requirement in India. ECB proceeds parked overseas can be invested in the following liquid assets (a) deposits or certificate of deposits or other products offered by banks rated not less than AA(-) by Standard and Poor / Fitch IBCA or Aa3 by Moody's; (b) deposits with overseas branch of an AD bank in India; and (c) Treasury bills and other monetary instruments of one year maturity having minimum rating as indicated above. The funds should be invested in such a way that the investments can be liquidated as and when funds are required by the borrower in India.

x). Prepayment

- (a) Prepayment of ECB upto USD 500 million may be allowed by AD bank without prior approval of Reserve Bank subject to compliance with the stipulated minimum average maturity period as applicable to the loan.
- (b) Pre-payment of ECB for amounts exceeding USD 500 million would be considered by the Reserve Bank under the Approval Route.

xi). Refinancing of an existing ECB

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.

xii). Debt Servicing

The designated AD bank has general permission to make remittances of installments of principal, interest and other charges in conformity with ECB guidelines issued by Government / Reserve Bank of India from time to time.

xiii). Procedure

Applicants are required to submit an application in form ECB through designated AD bank to the Chief General Manager-in-Charge, Foreign Exchange Department, Reserve Bank of India, Central Office, Central Office, External Commercial Borrowings Division, Mumbai – 400 001, along with necessary documents.

xiv). Empowered Committee

Reserve Bank has set up an Empowered Committee to consider proposals coming under the Approval Route.

II. REPORTING ARRANGEMENTS AND DISSEMINATION OF INFORMATION

i). Reporting Arrangements

- a). With a view to simplify the procedure, submission of copy of loan agreement is dispensed with.
- b). For allotment of loan registration

Number, borrowers are required to submit Form 83, in duplicate, certified by the Company Secretary (CS) or Chartered Accountant (CA) to the designated AD bank. One copy is to be forwarded by the designated AD bank to the Director, Balance of Payments Statistics Division, Department of Statistics and Information System (DSIM), Reserve Bank of India, Bandra-Kurla Complex, Mumbai – 400 051 [Note: copies of loan agreement, offer documents for FCCB are not required to be submitted with Form 83].

c). The borrower can draw-down the loan only after obtaining the loan registration number from DSIM, Reserve Bank of India.

d). Borrowers are required to submit ECB-2 Return certified by the designated AD bank on monthly basis so as to reach DSIM, RBI within seven working days from the close of month to which it relates.

[Note: All previous returns relating to ECB viz. ECB 3 – ECB 6 have been discontinued with effect from January 31, 2004].

ii). Dissemination of Information

For providing greater transparency, information with regard to the name of the borrower, amount, purpose and maturity of ECB under both Automatic Route and Approval Route are put on the Reserve Bank website on a monthly basis with a lag of one month to which it relates.

III. STRUCTURED OBLIGATIONS

In order to enable Corporate to raise resources domestically and hedge exchange rate risks,

Domestic rupees denominated structured obligations are permitted to be credit enhanced by international banks / international financial institutions / joint venture partners. Such applications will be considered under the Approval Route.

IV. COMPLIANCE WITH ECB GUIDELINES

The primary responsibility to ensure that ECB raised / utilized are in conformity with the ECB guidelines and the Reserve Bank regulations / directions is that of the concerned borrower and any contravention of the ECB guidelines will be viewed seriously and will invite penal action under FEMA 1999 (cf. A.P. (DIR Series) Circular No.31 dated February 1, 2005). The designated AD bank is also required to ensure that raising / utilization of ECB is in compliance with ECB guidelines at the time of certification.

V. CONVERSION OF ECB INTO EQUITY

(i). Conversion of ECB into equity is permitted subject to the following conditions:

- (a) The activity of the company is covered under the Automatic Route for Foreign Direct investment or Government approval for foreign equity participation has been obtained by the company,
- (b) The foreign equity holding after such conversion of debt into equity is within the sectoral cap, if any,
- (c) Pricing of shares is as per SEBI and erstwhile CCI guidelines / regulations in the case listed / unlisted companies as the case may be.

(ii). Conversion of ECB may be reported to the Reserve Bank as follows:

- (a) Borrowers are required to report full conversion of outstanding ECB into equity in the form FC-GPR to the concerned Regional Office of the Reserve Bank as well as in form ECB-2 submitted to the DSIM, RBI within seven working days from the close of month to which it relates. The words “ECB wholly converted to equity” should be clearly indicated on top of the ECB-2 form. Once reported, filing of ECB-2 in the subsequent months is not necessary.
- (b) In case of partial conversion of outstanding ECB into equity, borrowers are required to report the converted portion in form FC-GPR to the concerned Regional Office as well as in form ECB-2 clearly differentiating the converted portion from the unconverted portion. The words “ECB partially converted to equity” should be indicated on top of the ECB-2 form. In subsequent months, the outstanding portion of ECB should be reported in ECB-2 form to DSIM.

VI. CRYSTALLISATION OF ECB

AD banks design to crystallize their foreign exchange liability arising out of guarantees provided for ECB raised by corporate in India into Rupees, may make an application to the Chief General Manager-in-Charge, Foreign Exchange Department, External Commercial Borrowing Division, Reserve Bank of India, Central Office, Mumbai, giving full details viz., name of the borrower, amount raised, maturity, circumstances leading to invocation of guarantee / letter of comfort, date of default, its impact on the liabilities of the overseas branch of the AD concerned and other relevant factors.

VII. ECB UNDER THE ERSTWHILE USD 5 MILLION SCHEME

Designated AD banks are permitted to approve elongation of repayment period for loans raised under the erstwhile USD 5 Million Scheme, provided there is a consent letter from the overseas lender for such reschedulement without any additional cost. Such approval with existing and revised repayment schedule along with the Loan Key / Loan Registration Number should be initially communicated to the Chief General Manager-in-Charge, Foreign Exchange Department, Reserve Bank of India, Central Office, ECB Division, and Mumbai within seven days of approval and subsequently in ECB – 2.

TRADE CREDITS FOR IMPORTS INTO INDIA

‘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. Depending on the source of finance, such trade credits include suppliers’ credit or buyers’ credit. Suppliers credit relates to credit for imports in to India extended by the overseas supplier, while buyers’ credit refers to loans for payment of imports in to India arranged by the importer from a bank or financial institution outside India for maturity of less than three years. It may be noted that buyers’ credit and suppliers’ credit for three years and above come under the category of External Commercial Borrowings (ECB) which are governed by ECB guidelines.

a). Amount and Maturity

AD banks are permitted to approve trade credits for imports into India up to USD 20 million per import transaction for imports permissible under the current Foreign Trade Policy of the

DGFT with a maturity period up to one year (from the date of shipment). For import of capital goods as classified by DGFT, AD banks may approve trade credits up to USD 20 million per import transaction with a maturity period of more than one year and less than three years. No roll-over / extension will be permitted beyond the permissible period.

AD banks shall not approve trade credit exceeding USD 20 million per import transaction.

b). All-in-cost Ceilings

The current all-in-cost ceilings are as under.

Average Maturity Period	All-in-cost Ceilings over 6 month LIBOR*
Up to one year	75 basis points
More than one year but less than three years	125 basis points

*For the respective currency of credit or applicable benchmark.

The all-in-cost ceilings include arranger fee, upfront fee, management fee, handling / processing charges, out of pocket and legal expenses, if any.

c). Guarantee

AD Bank are permitted to issue Letters of Credit / guarantees / Letter of Undertaking (Lou) / Letter of Comfort (Loc) in favor of overseas supplier, bank and financial institution, upto USD 20 million per transaction for a period up to one year for import of all non-capital goods permissible under Foreign Trade Policy (except gold) and up to three years for import of capital goods, subject to

prudential guidelines issued by Reserve Bank from time to time. The period of such Letters of credit / guidelines / Lou / Loc has to be co-terminus with the period of credit, reckoned from the date of shipment.

d). Reporting Arrangements

AD banks are required to furnish details of approvals, drawl, utilization, and repayment of trade credit granted by all its branches, in a consolidated statement, during the month, in form TC from April 2004 onwards to the Director, Division of International Finance, Department of Economic Analysis and Policy, Reserve Bank of India, Central Office Building, 8th Floor, For, Mumbai – 400 001 (and in MS-Excel flee through email to deapdif@rbi.org.in) so as to reach not later than 10th of the following month. Each trade credit may be given a unique identification number by the AD bank.

AD banks are required to furnish data on issuance of LCs / guarantees / Lou / Loc by all its branches, in a consolidated statement, at quarterly intervals to the Chief General Manager-in-Charge, Foreign Exchange Department, ECB Division, Reserve Bank of India, Central Office Building, Fort, Mumbai – 400 001 (and in MS-Excel flee through email to fedcoecbd@rbi.org.in) from December 2004 onwards so as to reach the department not later than 10th of the following month.