



External Commercial Borrowing

Retail Trade and Forex Offering

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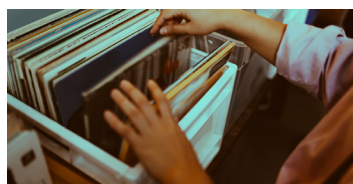
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An introduction

External Commercial Borrowing



External Commercial Borrowings are commercial loans raised by **eligible resident entities** from recognised non-resident entities to meet their capex expenditure, working capital requirements, etc.

As per extant regulations, External Commercial Borrowing transactions should adhere to criteria like

- minimum maturity period,
- permitted and non-permitted end-uses,
- maximum all-in-cost ceiling, etc.

ECB can be raised in **INR or any freely convertible Foreign Currency**.

Advantages of ECB:



Benefit from cheaper rate of interest prevailing overseas



Funds can be availed for longer duration



Raising funds without giving up control

Advantage HDFC Bank Ltd



Dedicated team of Trade & Forex Sales Managers to handhold and extend support during entire life cycle of ECB transaction



Dedicated RBI Liaisoning team to help with Regulatory approvals



Simplified documentation

Steps involved in availing External Commercial Borrowing



1

Submission of FORM ECB & Loan Agreement to AD Bank

Post Scrutiny AD Bank to submit documents with RBI

2



3

RBI Issues Loan Registration No

Draw down of loan for credit to borrowers account

4



5

Submission of Form ECB 2 by every 7th of month for further submission to RBI

Regulatory reference:

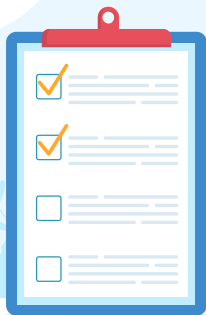


FED Master Direction
No.5/2018-19 - Master
Direction - External
Commercial Borrowings,
Trade Credits and Structured
Obligations (Updated as
on September 30, 2022)

Notification No.
FEMA.3(R)/2018-RB -
Foreign Exchange
Management
(Borrowing and Lending)
Regulations, 2018 dated
December 17, 2018

FAQs updated as
on May 29, 2019

ECB Framework:



Forms of ECB

FCY denominated ECB

Loans including bank loans; floating/ fixed rate notes/ bonds/ debentures (other than fully and compulsorily convertible instruments); Trade credits beyond 3 years; FCCBs; FCEBs and Financial Lease.

INR denominated ECB

Loans including bank loans; floating/ fixed rate notes/bonds/ debentures/ preference shares (other than fully and compulsorily convertible instruments); Trade credits beyond 3 years; and Financial Lease. Also, plain vanilla Rupee denominated bonds issued overseas, which can be either placed privately or listed on exchanges as per host country regulations.



Eligible borrowers

FCY denominated ECB

All entities eligible to receive FDI. Further, the following entities are also eligible to raise ECB:

- i. Port Trusts;
- ii. Units in SEZ;
- iii. SIDBI; and
- iv. EXIM Bank of India.

INR denominated ECB

- a) All entities eligible to raise FCY ECB; and
- b) Registered entities engaged in micro-finance activities, viz., registered Not for Profit companies, registered societies/trusts/cooperatives and Non-Government Organisations.



Recognised lenders

FCY denominated ECB | INR denominated ECB

The lender should be resident of FATF or IOSCO compliant country, including on transfer of ECB. However,

- a) Multilateral and Regional Financial Institutions where India is a member country will also be considered as recognised lenders;
- b) Individuals as lenders can only be permitted if they are foreign equity holders or for subscription to bonds/debentures listed abroad; and

c) Foreign branches / subsidiaries of Indian banks are permitted as recognised lenders only for FCY ECB (except FCCBs and FCEBs). Foreign branches / subsidiaries of Indian banks, subject to applicable prudential norms, can participate as arrangers/underwriters/market-makers/traders for Rupee denominated Bonds issued overseas. However, underwriting by foreign branches/subsidiaries of Indian banks for issuances by Indian banks will not be allowed.



A country whose securities market regulator is a signatory to the International Organisation of Securities Commission's (IOSCO's) Multilateral Memorandum of Understanding (Appendix A Signatories) **or** a signatory to bilateral Memorandum of Understanding with the SEBI for information sharing arrangements.



Foreign Equity Holder means (a) direct foreign equity holder with minimum 25% direct equity holding in the borrowing entity, (b) indirect equity holder with minimum indirect equity holding of 51%, or (c) group company with common overseas parent.

Minimum Average Maturity Period (MAMP)

MAMP for ECB will be 3 years. However, for the specific categories mentioned below, the MAMP will be as prescribed therein:

Sr.No.	Category	MAMP
(a)	ECB raised by manufacturing companies up to USD 50 million or its equivalent per financial year.	1 year
(b)	ECB raised from foreign equity holder for working capital purposes, general corporate purposes or for repayment of Rupee loans	5 years
(c)	ECB raised for (i) working capital purposes or general corporate purposes (ii) on-lending by NBFCs for working capital purposes or general corporate purposes	10 years
(d)	ECB raised for (i) repayment of Rupee loans availed domestically for capital expenditure (ii) on-lending by NBFCs for the same purpose	7 years
(e)	ECB raised for (i) repayment of Rupee loans availed domestically for purposes other than capital expenditure (ii) on-lending by NBFCs for the same purpose	10 years

for the categories mentioned at (b) to (e)

- (i) ECB cannot be raised from foreign branches / subsidiaries of Indian banks
- (ii) The prescribed MAMP will have to be strictly complied with under all circumstances.

*Call and put options, if any, shall not be exercisable prior to completion of minimum average maturity.



All-in-cost ceiling per annum

FCY denominated ECB

- a. Benchmark Rate plus **550 bps** spread:
For existing ECBs linked to LIBOR whose benchmarks are changed to ARR.
- b. Benchmark rate plus **500 bps** spread:
For new ECBs.

INR denominated ECB

- a. Benchmark rate plus **450 bps** spread.



Alternate Reference Rate: Alternative Reference Rate (ARR) refers to any widely accepted ARR for the respective currency



Other costs

FCY denominated ECB | INR denominated ECB

Prepayment charge/ Penal interest, if any, for default or breach of covenants, should not be more than 2 per cent over and above the contracted rate of interest on the outstanding principal amount and will be outside the all in cost ceiling.



ECB: Negative List of End Uses

FCY denominated ECB | INR denominated ECB

The negative list, for which the ECB proceeds cannot be utilised, would include the following:

- a) Real estate activities.
- b) Investment in capital market.
- c) Equity investment.
- d) Working capital purposes, except in case of ECB mentioned at point no (b) and (c) of (MAMP) on page 11
- e) General corporate purposes, except in case of ECB mentioned at point no (b) and (c) of (MAMP) on page 11
- f) Repayment of Rupee loans, except in case of ECB mentioned at point no (d) and (e) of (MAMP) on page 11
- g) On-lending to entities for the above activities, except in case of ECB raised by NBFCs as given at point no (c), (d) and (e) of (MAMP) on page 11



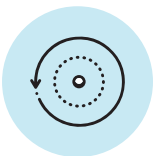
Hedging provision

- The entities raising ECB are required to follow the guidelines for hedging issued, if any, by the concerned sectoral or prudential regulator in respect of foreign currency exposure. Infrastructure space companies shall have a Board approved risk management policy.
- Further, such companies are required to mandatorily **hedge 70 % of their ECB exposure** in case the **average maturity** of the ECB is less than **5 yrs**.



Coverage:

- The ECB borrower will be **required to cover the principal as well as the coupon** through financial hedges.
- The financial hedge for all exposures on account of ECB **should start from the time of each such exposure** (i.e. the day the liability is created in the books of the borrower).



Tenor and rollover:

A minimum tenor of one year for the financial hedge would be required **with periodic rollover**, duly ensuring that the exposure on account of ECB is not unhedged at any point during the currency of the ECB.



Natural Hedge:

Natural hedge, in lieu of financial hedge, will be **considered only to the extent of offsetting projected cash flows / revenues in matching currency, net of all other projected outflows**.

Change of currency of ECB from one freely convertible foreign currency to any other freely convertible foreign currency as well as to INR is freely permitted. However, Change of currency from INR to any freely convertible foreign currency is not permitted.



Limit & Leverage:

All eligible borrowers can raise ECB up to **USD 750 million or equivalent per financial year** under the automatic route. Further, in case of **FCY denominated ECB** raised from direct foreign equity holder, **ECB liability-equity ratio** for ECB raised under the automatic route **cannot exceed 7:1**. However, this ratio will not be applicable if the outstanding amount of all ECB, including the proposed one, is **up to USD 5 million** or its equivalent. The borrowing entities **will also be governed by the guidelines** on debt equity ratio, issued, if any, by the **sectoral or prudential regulator** concerned.



Parking of ECB Proceeds

Parking of ECB proceeds abroad: ECB proceeds meant only for foreign currency expenditure can be parked abroad pending utilisation. Till utilisation, these funds 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) Treasury bills and other monetary instruments of one-year maturity having minimum rating as indicated above and
- (c) deposits with foreign branches/subsidiaries of Indian banks abroad.

Parking of ECB proceeds in India: ECB proceeds meant for rupee expenditure should be repatriated immediately for credit to their Rupee accounts with AD Category I banks in India. ECB borrowers are also allowed to park ECB proceeds in term deposits with AD Category I banks in India for a maximum period of 12 months cumulatively. These term deposits should be kept in unencumbered position.



Reporting Requirements:



Loan Registration Number (LRN):

Any draw-down in respect of an ECB should happen only after obtaining the LRN from the Reserve Bank. To obtain the LRN, borrowers are required to submit duly certified Form ECB, which also contains terms and conditions of the ECB, in duplicate to the designated AD Category I bank.



Monthly Reporting of actual transactions:

The borrowers are required to report actual ECB transactions through Form ECB 2 Return through the AD Category I bank on monthly basis so as to reach DSIM within seven working days from the close of month to which it relates. Changes, if any, in ECB parameters should also be incorporated in Form ECB 2 Return.



Changes in terms and conditions of ECB

Changes in ECB parameters in consonance with the ECB norms, including reduced repayment by mutual agreement between the lender and borrower, should be reported to the DSIM through revised Form ECB at the earliest, in any case not later than 7 days from the changes effected.

Late Submission Fee (LSF) for delay in reporting



Any borrower, who is otherwise in compliance of ECB guidelines, can regularise the delay in reporting of drawdown of ECB proceeds before obtaining LRN or delay in submission of Form ECB/Form ECB 2 returns, by payment of late submission fees as detailed in the following matrix:

Sr. No.	Type of Reporting delays	LSF Amount (INR)
1	Form ODI Part-II/ APR, FCGPR (B), FLA Returns, Form OPI, evidence of investment or any other return which does not capture flows or any other periodical reporting	7500
2	FC-GPR, FCTRS, Form ESOP, Form LLP(I), Form LLP(II), Form CN, Form DI, Form InVi, Form ODI-Part I, Form ODI-Part III, Form FC, Form ECB, Form ECB-2, Revised Form ECB or any other return which captures flows or returns which capture reporting of non-fund transactions or any other transactional reporting	$[7500 + (0.025\% \times A \times n)]$

Notes:

- a) "n" is the number of years of delay in submission rounded-upwards to the nearest month and expressed up to 2 decimal points.
- b) "A" is the amount involved in the delayed reporting.
- c) LSF amount is per return. However, for any number of Form ECB-2 returns, delayed submission for each LRN will be treated as one instance for the fixed component. Further, 'A' for any ECB-2 return will be the gross inflow or outflow (including interest and other charges), whichever is more.
- d) Maximum LSF amount will be limited to 100 per cent of 'A' and will be rounded upwards to the nearest hundred.
- e) The facility for opting for LSF shall be available up to three years from the due date of reporting/ submission.

Conversion of ECB into equity:

Conversion of ECBs, including those which are matured but unpaid, into equity is permitted subject to the conditions specified in ECB framework

- i. The activity of the borrowing company is covered under the automatic route for FDI or Government approval is received, wherever applicable, for foreign equity participation as per extant FDI policy.
- ii. The conversion, which should be with the lender's consent and without any additional cost, should not result in contravention of eligibility and breach of applicable sector cap on the foreign equity holding under FDI policy;

Special Dispensation for Startups



Eligibility:

An entity recognised as a Startup by the Central Government as on date of raising ECB.



Maturity:

Minimum average maturity period will be 3 years.



Recognised lender:

Lender / investor shall be a resident of a FATF compliant country. However, foreign branches/subsidiaries of Indian banks and overseas entity in which Indian entity has made overseas direct investment will not be considered as recognised lenders under this framework.



Forms:

The borrowing can be in form of loans or non-convertible, optionally convertible or partially convertible preference shares.



Currency:

The borrowing should be denominated in any freely convertible currency or in Indian Rupees (INR) or a combination thereof.



Amount:

The borrowing per Startup will be limited to USD 3 million or equivalent per financial year either in INR or any convertible foreign currency or a combination of both.



All-in-cost:

Shall be mutually agreed between the borrower and the lender.



End uses:

For any expenditure in connection with the business of the borrower.



Conversion into equity:

Conversion into equity is freely permitted subject to Regulations applicable for foreign investment in Startups.



Security:

The choice of security to be provided to the lender is left to the borrowing entity. Security can be in the nature of movable, immovable, intangible assets (including patents, intellectual property rights), financial securities, etc. and shall comply with foreign direct investment / foreign portfolio investment / or any other norms applicable for foreign lenders / entities holding such securities. Further, issuance of corporate or personal guarantee is allowed. Guarantee issued by a non-resident(s) is allowed only if such parties qualify as lender under ECB for Startups. However, issuance of guarantee, standby letter of credit, letter of undertaking or letter of comfort by Indian banks, all India Financial Institutions and NBFCs is not permitted.



Hedging:

The overseas lender, in case of INR denominated ECB, will be eligible to hedge its INR exposure through permitted derivative products with AD Category – I banks in India.



Conversion rate:

In case of borrowing in INR, the foreign currency – INR conversion will be at the market rate as on the date of agreement.



Other Provisions:

Other provisions like parking of ECB proceeds, reporting arrangements, powers delegated to AD banks, borrowing by entities under investigation, conversion of ECB into equity will be as included in the ECB framework. However, provisions on leverage ratio and ECB liability: Equity ratio will not be applicable.

List of documents

for LRN application:



- 1) Form ECB
- 2) Loan agreement / Term Sheet mentioning details of loan.
 - a. Complete details of lender and borrower
 - b. Loan currency and amount
 - c. Details on draw down and repayment.
 - d. Rate of interest whether Fixed or floating. In case of FCY ECB, benchmark rate refers to Alternate Reference Rate of 6-month tenor applicable to the currency of borrowing. The all-in-cost ceiling for new FCY ECBs is benchmark rate plus 500 bps and for INR ECB it is benchmark rate + 450 bps. (Benchmark rate in case of Rupee denominated ECB will be prevailing yield of the Government of India securities of corresponding maturity).
- 3) If lender is a bank then their sanction letter or if lender is Foreign equity holder then RBI approval taking foreign investment on record (FCGPR / FCTRS

acknowledgement)

- 4) Covering letter from borrower stating below.
 - a] Activity of company.
 - b] Breakup of End use of ECB proceeds.
 - c] Undertaking from company that loan amount will not be used for any of the End Uses not permitted by RBI.
 - d] Declaration on any regulatory investigations either by state or central authorities is pending against the company or any of its Promoters, Directors, Authorized Signatories.
- 5) Board resolution from borrowing company approving to avail ECB covering ECB amount, currency of borrowing, tenor, end use of ECB and lender name.
- 6) Average maturity calculation
- 7) MOA & COI copy
- 8) Calculation of All-in-Cost.

Note: Documents mentioned above is an indicative checklist. Please contact your branch Trade & Forex Sales Manager before submission of documents for LRN generation.



THANK YOU
