



Foreign Exchange Management (Borrowing and Lending) Regulations, 2018

The Reserve Bank of India ('RBI') vide Notification No. FEMA 3(R)/2018-RB dated 17 December 2018, has issued the Foreign Exchange Management (Borrowing and Lending) Regulations, 2018 ('Revised Framework') laying down a revamped regulatory regime for borrowing and lending transactions between persons resident in India and persons resident outside India. The Revised Framework supersedes the existing regulations on borrowing and lending in foreign exchange/ rupees and the regulations dealing with issuance of Foreign Currency Convertible/Exchangeable Bonds. This follows the spate of recent liberalizations in the External Commercial Borrowings ('ECB') Regulations and the latest RBI Press Release dated 20 December 2018 wherein the Government of India decided to put in place a rule based dynamic limit for outstanding stock of ECBs at any particular point in time.

In this connection, summarized below are the key changes introduced by the Revised Framework:

(A) Borrowing in Foreign Exchange and Indian Rupees under ECB framework

Key Parameters	Existing Framework	Revised Framework
Eligible Borrowers	Specific classes such as companies engaged in manufacturing, software development, SEZ developers, start-ups ¹ , etc.	All entities eligible to receive foreign direct investment including start-ups
Recognised Lenders	Specified classes such as international banks, international capital markets, foreign equity holders etc.	<ul style="list-style-type: none"> Any resident of Financial Action Task Force or International Organization of Securities Commissions compliant country

¹ "Start-up" means an entity which complies with the conditions laid down in Notification No. G.S.R 180(E) dated February 17, 2016, as amended/ updated from time to time, issued by Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India.



		<ul style="list-style-type: none"> • Multilateral and Regional Financial Institutions (where India is a member country) • Foreign branches/ subsidiaries of Indian banks for ECBs proposed to be raised in foreign currency
End-use Restrictions	Specified classes of transactions restricted such as investment in real estate/ purchase of land except affordable housing ² , construction and development of SEZ and industrial parks/integrated townships, investment in equity and capital markets, working capital/ general corporate purposes, repayment of rupee loans and on-lending for some of above activities	Funds cannot be used ³ for: <ul style="list-style-type: none"> • Business of chit fund or Nidhi Company; • Investment in capital market including margin trading and derivatives; • Agricultural or plantation activities; • Real estate activity⁴ or construction of farm houses; and • Trading in Transferrable Development Rights
Minimum Average Maturity	1-10 years depending on amount and borrower	3 years
All-in-cost Ceiling	<ul style="list-style-type: none"> • In case of foreign currency ECB - 4.5% p.a. over 6 months LIBOR or applicable bench mark for the respective currency • In case of rupee denominated ECB - 4.5% p.a. over prevailing yield of Government Security of corresponding maturity 	
Individual Borrowing Limits (per financial year)	<ul style="list-style-type: none"> • Generally, upto USD 500 million or equivalent • For certain special classes of borrowers, USD 100 million to USD 750 million or equivalent (USD 3 million or equivalent in case of start-ups) 	<ul style="list-style-type: none"> • Up to USD 750 million or equivalent (USD 3 million or equivalent in case of start-ups)

² As defined in Harmonised Master List of Infrastructure Sub-sectors notified by Government of India

³ Schedule I dealing with ECB uses the term 'negative end-use list' which will be prescribed by the RBI in consultation with the Government of India. The restrictions mentioned above are part of the defined term 'Restricted End Uses'. Given that the term 'negative end-use list' has not been specifically defined, it is possible that a separate list may be notified for ECBs by the RBI in due course.

⁴ "Real Estate Activity" means any activity involving own or leased property for buying, selling and renting of commercial and residential properties or land and also includes activities either on a fee or contract basis assigning real estate agents for intermediating in buying, selling, letting or managing real estate. However, this would not include development of integrated township, purchase/ long term leasing of industrial land as part of new project/modernisation or expansion of existing units or any activity under 'infrastructure subsectors' as given in the Harmonised Master List of Infrastructure sub-sectors approved by the Government of India vide Notification F. No. 13/06/2009-INF, as amended/ updated from time to time.



Automatic/ Approval route	<ul style="list-style-type: none">• RBI approval required for raising ECB beyond prescribed limits (except for Foreign Currency Exchangeable Bonds which will always be under approval route)	<ul style="list-style-type: none">• RBI approval required for raising ECBs not in conformity with prescribed parameters• Financial Institutions raising foreign exchange or rupee denominated borrowings from outside India for onward lending will always require prior Government approval
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(B) Other Aspects

- Eligible resident entities may borrow in Indian Rupees from Overseas Multilateral Financial/ International Development Financial Institutions where the source of funds is Rupee denominated bonds issued overseas or resources raised domestically or any other source as approved by the Government of India.
- Any foreign investment in the nature of debt not covered under the Revised Framework should be in compliance with the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulation, 2017.
- Relaxation in ability of Authorized Dealers to raise ECBs.
- A resident Indian individual studying abroad may raise loans outside India upto USD 2,50,000 or its equivalent for payment of education fees abroad and maintenance.
- Changes have been made to the regulations on Trade Credits modifying various aspects such as limits per import transaction (USD 50 million vs. USD 20 million earlier), maximum maturity period for import of capital goods (3 years vs. 5 years earlier), cost ceiling (2.5% over 6 month LIBOR or equivalent vs. 3.5% earlier) etc.
- The framework for lending in Foreign Exchange and Indian Rupees is largely on same lines with the existing framework.
- Any borrowings under the erstwhile framework can be continued as permitted up to the due date of repayment.

Dhruva comments

The revamped regulations are certainly a welcome move since it will open up a fresh funding route for market participants who were hitherto ineligible to tap into this route. However, greater clarity is required on some facets such as applicability of the Revised Framework to Non-Convertible Debentures issued to Foreign Portfolio Investors in absence of any specific exclusion as provided in the erstwhile ECB regulations, applicability of the framework to Rupee denominated or Masala Bonds etc. Further, it is also important to note that the regulations give RBI the powers to amend the list of permissible borrowers, lenders, maturity and



individual limits. It would be interesting to see if the RBI exercises these powers in due course of time to make the regulations more onerous.

In addition, this liberalization will need to be seen in conjunction with the ECB limits Press Release wherein the RBI has announced an overall limit of 6.5% of GDP as the limit for outstanding stock of ECBs. Based on the GDP figures as on 31 March 2018, the limit for the current financial year works out to USD 160 billion, of which USD 126.29 billion has already been utilized till 30 September 2018. While one could potentially see several players rushing to the capital markets for raising ECBs, the balance available limit of USD 33.71 billion can easily be breached and thereby render the aforesaid liberalization academic in nature unless limits become available.



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