

EXTERNAL COMMERCIAL BORROWING

Dhrumil M Shah & Co

Practising Company Secretaries & Trade Marks Agent

ADD: R-2 / 710|Golden Building | Garodia Nagar|

Nr. Orbit Tower|Ghatkopar (E)|Mumbai -400077

Mob:9820177898|LL: 02232555760| www.dmshah.in



- ECBs refer to commercial loans in the form of bank loans, securitized instruments(e.g. floating rate notes and fixed rate bonds, non-convertible, optionally convertible or partially convertible preference shares),buyers' credit, suppliers' credit availed of from non-resident lenders with a minimum average maturity of 3 years.



WHO CAN BE A ELIGIBLE LENDER IN ECB

- Borrowers can raise ECB from internationally recognized sources, such as (a) international banks, (b) international capital markets, (c) multilateral financial institutions (such as IFC, ADB, CDC, etc.) / regional financial institutions and Government owned development financial institutions, (d) export credit agencies, (e) suppliers of equipment's, (f) foreign collaborators and (g) **foreign equity holders [other than erstwhile Overseas Corporate Bodies (OCBs)]**.
- NGOs engaged in micro finance and MFIs registered as societies, trusts and co-operatives can avail of ECBs from (a) international banks, (b) multilateral financial institutions, (c) export credit agencies (d) overseas organizations and (e) individuals.
- NBFC-MFIs will be permitted to avail of ECBs from multilateral institutions, such as IFC, ADB etc./ regional financial institutions/international banks / foreign equity holders and overseas organizations.
- Companies registered under Section 25 of the Companies Act,1956 and are engaged in micro finance will be permitted to avail of ECBs from international banks, multilateral financial institutions, export credit agencies, foreign equity holders, overseas organizations and individuals.



WHO CAN BE A ELIGIBLE LENDER IN ECB

- A "foreign equity holder" to be eligible as "recognized lender" under the automatic route would require minimum holding of paid up equity in the borrower company as set out below:
 - i. For ECB up to USD 5 million - minimum paid-up equity of 25 per cent held directly by the lender (all outstanding ECBs including the proposed one),
 - ii. For ECB more than USD 5 million - minimum paid-up equity of 25 per cent held directly by the lender and ECB liability-equity ratio not exceeding 4:1 (all outstanding ECBs including the proposed one).

- Besides the paid-up capital, free reserves (including the share premium received in foreign currency) as per the latest audited balance sheet shall be reckoned for the purpose of calculating the 'equity' of the foreign equity holder in the term ECB liability equity ratio. Where there are more than one foreign equity holders in the borrowing company, the portion of the share premium in foreign currency brought in by the lender(s) concerned shall only be considered for calculating the ECB liability-equity ratio for reckoning quantum of permissible ECB.

- For calculating the 'ECB liability', not only the proposed borrowing but also the outstanding ECB from the same foreign equity holder lender shall be reckoned.



COMPLIANCE FOR INDIVIDUAL LENDER

- **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.**



WHO CAN BE A BORROWER UNDER AUTOMATIC ROUTE.

- Corporates, including those in the hotel, hospital, software sectors (registered under the Companies Act, 1956), Non-Banking Finance Companies (NBFCs) - Infrastructure Finance Companies (IFCs), NBFCs - Asset Finance companies (AFCs), Small Industries Development Bank of India (SIDBI).
- Non-Government Organizations (NGOs) engaged in micro finance activities are eligible to avail of ECB
- SEZ units – for their own requirement. Cannot transfer or onlend ECB funds to sister concerns or DTA units



AMOUNT AND MATURITY

- **The maximum amount of ECB which can be raised by a corporate other than those in the hotel, hospital and software sectors, and corporate in miscellaneous services sector is USD 750 million or its equivalent during a financial year.**

Amount	Minimum Average Maturity
USD 20 million	Three years
USD 20 million or equivalent and up to USD 750 million	Five years.

- ECB up to USD 20 million or equivalent can have call/put option provided the minimum average maturity of three years is complied with before exercising call/put option.
- All eligible borrowers can avail of ECBs designated in INR from 'foreign equity holders' as per the extant ECB guidelines.



PERMITTED END-USE OF FUNDS

- Import of Capital Goods
- Executing New Projects
- Modernization / Expansion of existing units in real sector - industrial sector including small and medium enterprises (SME) and infrastructure sector and specific service sector in India.

Infrastructure sector is defined as (i) power, (ii) telecommunications, (iii) railways, (iv) road including bridges, (v) sea port and airports, (vi) industrial parks and (vii) urban infrastructure (water supply, sanitation and sewage projects).

- First stage acquisition of shares in the disinvestment process and also in the mandatory second stage offer under GOIs disinvestment program.
- ODI in Joint Ventures / Wholly Owned Subsidiaries.



PERMITTED END-USE OF FUNDS

- ECB can be raised for investment such as import of capital goods (as classified by DGFT in the Foreign Trade Policy), new projects.
- **ECB for general corporate purposes from direct foreign equity holders by companies in manufacturing, infrastructure, hotels, hospitals and software sector:** *Eligible borrowers can avail ECB from their direct foreign equity holder company with a minimum average maturity of 7 years for general corporate purposes (which includes working capital) subject to the following conditions:*
 - i. Minimum paid-up equity of 25 per cent should be held directly by the lender;*
 - ii. Such ECBs would not be used for any purpose not permitted under extant the ECB guidelines (including on-lending to their group companies / step-down subsidiaries in India); and Repayment of the principal shall commence only after completion of minimum average maturity of 7 years.*
 - iii. No prepayment will be allowed before maturity.*



PROHIBITED END-USE OF FUNDS

- General corporate purpose which includes working capital (other than what has been given at I(A)(v)(l) i.e in Permitted End Use) and repayment of existing rupee loans and Repayment of existing Rupee loans
- For on-lending or investment in capital market or acquiring a company (or a part thereof) in India by a corporate [investment in Special Purpose Vehicles (SPVs), Money Market Mutual Funds (MMMFs), etc., are also considered as investment in capital markets].
- Investment in capital market or acquiring a company in India (including investment in SPV or Money Market Mutual Funds)
- Real Estate Sector

The proceeds of the ECBs should not be used for acquisition of land



PROCEDURE

- Submit Form 83, in duplicate, certified by the Company Secretary (CS) or Chartered Accountant (CA) to the designated AD bank.



- Obtain loan Registration Number (LRN)



- The borrower can draw-down the loan only after obtaining the LRN from DSIM, Reserve Bank.



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



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 (FIPB) approval for foreign equity participation has been obtained by the company, wherever applicable.
 - 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 the pricing guidelines issued under FEMA, 1999 in the case of listed/ unlisted companies.
 - d. In case the ECB liability, denominated in foreign currency and /or import of capital goods, etc. is sought to be converted by the company, **it will be in order to apply the exchange rate prevailing on the date of the agreement between the parties concerned for such conversion. Reserve Bank will have no objection if the borrower company wishes to issue equity shares for a rupee amount less than that arrived at as mentioned above by a mutual agreement with the ECB lender. It may be noted that the fair value of the equity shares to be issued shall be worked out with reference to the date of conversion only.**



CONVERSION OF ECB INTO EQUITY

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 Regional Office concerned 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 Regional Office concerned 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.



THANK YOU