

August 1, 2005

To

All banks authorised to deal in foreign exchange

Madam/Sirs,

External Commercial Borrowings (ECB)

Attention of Authorised Dealers is invited to the A.P. (DIR Series) Circular No.40 dated April 25, 2005 and A.P. (DIR Series) Circular No.60 dated January 31, 2004 in connection with External Commercial Borrowings (ECB). A review of the ECB guidelines has been undertaken keeping in view the current macroeconomic situation, the experience gained so far by the Reserve Bank in administering the ECB policy and requests received from certain sectors.

2. Accordingly, it has been decided to liberalise/modify the ECB policy as indicated below:

- (i) ECB with minimum average maturity of 5 years by non-banking financial companies (NBFCs) from multilateral financial institutions, reputable regional financial institutions, official export credit agencies and international banks to finance import of infrastructure equipment for leasing to infrastructure projects would be considered by the Reserve Bank under the Approval Route;
- (ii) Foreign Currency Convertible Bonds (FCCB) by housing finance companies satisfying specific criteria would be considered by the Reserve Bank under the Approval Route;
- (iii) Minimum holding of equity by the foreign equity holder in the borrower's company (which would qualify the foreign equity holder as a recognised lender for ECB) has been clarified;
- (iv) Prepayment of ECB up to USD 200 million (as against the existing limit up to USD 100 million) may be allowed by Authorised Dealers without prior approval of RBI subject to compliance of applicable minimum average maturity period for the loan. Pre-payment of ECB for amounts exceeding USD 200 million would be considered by the Reserve Bank under the Approval Route.
- (v) Currently, domestic rupee denominated structured obligations are permitted by the Government of India to be credit enhanced by international banks/international financial institutions/joint venture partners. Such applications would henceforth be considered by the Reserve Bank under the Approval Route.

3. The amended ECB policy will come into force with immediate effect and is subject to review.

4. Comprehensive and revised ECB guidelines are set out in the Annex to this circular.

5. Necessary amendments to the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 dated May 3, 2000 are being issued separately.

6. Authorised Dealer banks may bring the contents of this circular to the notice of their constituents and customers.

7. The direction contained in this circular has been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and is without prejudice to permissions / approvals, if any, required under any other law.

Yours faithfully,
(Vinay Baijal)
Chief General Manager

External Commercial Borrowings (ECB)

1. ECB refer to commercial loans [in the form of bank loans, buyers' credit, suppliers' credit, securitised instruments (e.g. floating rate notes and fixed rate bonds)] availed from non-resident lenders with minimum average maturity of 3 years. ECB can be accessed under two routes, viz., (i) Automatic Route outlined in paragraph 1(A) and (ii) Approval Route indicated in paragraph 1(B).

(A) AUTOMATIC ROUTE

Under the extant policy, 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) Eligible borrowers

(a) Corporates registered under the Companies Act except financial intermediaries (such as banks, financial institutions (FIs), housing finance companies and NBFCs) are eligible. Individuals, Trusts and Non-Profit making Organisations are not eligible to raise ECB.

(b) Non-Government Organisations (NGOs) engaged in micro finance activities are eligible to avail ECB. 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 the designated Authorised Dealer (AD).

ii) Recognised Lenders

(a) Borrowers can raise ECB from internationally recognised 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. Furthermore, overseas organisations and individuals complying with following safeguards may provide ECB to NGOs engaged in micro finance activities.

(b) **Overseas organisations** planning to extend 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 designated AD. 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 organised 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.

(c) **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 permitted to extend ECB.

(d) The key operative part in the credential of the overseas lender is that ECB should be availed from an internationally recognised source and one of the recognized categories is "foreign equity holder" as indicated above. It is clarified that for a "foreign equity holder" to be eligible as "recognized lender" under the automatic route would require minimum holding of equity in the borrower's company as under:

- (d. i) ECB up to USD 5 million – minimum equity of 25 per cent held directly by the lender,
- (d. ii) 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) ECB up to USD 20 million or equivalent with minimum average maturity of three years
- (b) ECB above USD 20 million and up to USD 500 million or equivalent with minimum average maturity of five years
- (c) The maximum amount of ECB which can be raised by a corporate is USD 500 million during a financial year.
- (d) NGOs engaged in micro finance activities can raise ECB up to USD 5 million during a financial year.
- (e) ECB up to USD 20 million can have call/put option provided the minimum average maturity of 3 years is complied 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 indicated 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 up to 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) ECB can be raised only for investment (such as import of capital goods, 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) ports, (vi) industrial parks and (vii) urban infrastructure (water supply, sanitation and sewage projects);
- (b) ECB proceeds can be utilised for 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) Utilisation of ECB proceeds is permitted in 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) NGOs engaged in micro finance activities may utilise ECB proceeds for lending to self-help groups or for micro-credit or for bonafide micro finance activity including capacity building.
- (e) Utilisation 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.
- (f) Utilisation of ECB proceeds is not permitted in real estate. The term 'real estate' excludes development of integrated township as defined by Ministry of Commerce and Industry, Department of Industrial Policy and Promotion, SIA (FC Division), Press Note 3 (2002 Series, dated 04.01.2002).
- (g) End-uses of ECB for working capital, general corporate purpose and repayment of existing Rupee loans are not permitted.

vi) Guarantees

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 permitted.

vii) 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 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, as amended from time to time, respectively.

viii) Parking of ECB proceeds overseas

ECB proceeds should be parked overseas until actual requirement in India. It is clarified that 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.

ix) Prepayment

Prepayment of ECB up to USD 200 million may be allowed by ADs without prior approval of RBI subject to compliance with the stipulated minimum average maturity period as applicable to the loan.

x) Refinance of existing ECB

Refinancing of existing ECB by raising fresh ECB at lower cost is permitted subject to the condition that the outstanding maturity of the original loan is maintained.

xi) Debt Servicing

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

xii) Procedure

Borrower may enter into loan agreement complying with ECB guidelines with recognised lender for raising ECB under Automatic Route without prior approval of RBI. The borrower may note to comply with the reporting arrangement under paragraph 1(C)(i). The primary responsibility to ensure that ECB raised/utilised are in conformity with the ECB guidelines and the Reserve Bank regulations/directions/circulars is that of the concerned borrower and any contravention of the ECB guidelines will be viewed seriously and may invite penal action. The designated AD is also required to ensure that raising/utilisation of ECB is in compliance with ECB guidelines at the time of certification.

(B) APPROVAL ROUTE

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

i) Eligible borrowers

- 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 RBI based on prudential norms. Any ECB availed for this purpose so far are deducted from their entitlement.
- c) Cases falling outside the purview of the automatic route limits and maturity period indicated at paragraphs 1A(iii) (a) and 1A(iii) (b).
- d) ECB with minimum average maturity of 5 years by **non-banking financial companies** (NBFCs) from multilateral financial institutions, reputable regional financial institutions, official export credit agencies and international banks to finance import of infrastructure equipment for leasing to infrastructure projects.
- e) Foreign Currency Convertible Bonds (FCCB) 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 crore, (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.

ii) Recognised Lenders

(a) Borrowers can raise ECB from internationally recognised 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.

(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).

iii) 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 indicated 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 up to five years	200 basis points
More than five years	350 basis points

* for the respective currency of borrowing or applicable benchmark.

iv) End-use

- (a) ECB can be raised only for investment (such as import of capital goods, 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) ports, (vi) industrial parks and (vii) urban infrastructure (water supply, sanitation and sewage projects);

- (b) ECB proceeds can be utilised for 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) Utilisation of ECB proceeds is permitted in 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) Utilisation 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 for banks and financial institutions eligible under paragraph 1B(i)(a) and 1B(i)(b).
- (e) Utilisation of ECB proceeds in real estate is not permitted. The term 'real estate' excludes development of integrated township as defined by Ministry of Commerce and Industry, Department of Industrial Policy and Promotion, SIA (FC Division), Press Note 3 (2002 Series, dated 04.01.2002).
- (f) End-uses of ECB for working capital, general corporate purpose and repayment of existing Rupee loans are not permitted.

v) Guarantees

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.

vi) 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 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, as amended from time to time, respectively.

vii) Parking of ECB proceeds overseas

ECB proceeds should be parked overseas until actual requirement in India. It is clarified that 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.

viii) Prepayment

(a) Prepayment of ECB up to USD 200 million may be allowed by ADs without prior approval of RBI subject to compliance with the stipulated minimum average maturity period as applicable to the loan.

(b) Pre-payment of ECB for amounts exceeding USD 200 million would be considered by the Reserve Bank under the Approval Route.

ix) Refinance of existing ECB

Refinancing of outstanding ECB by raising fresh ECB at lower cost is permitted subject to the condition that the outstanding maturity of the original loan is maintained.

x) Debt Servicing

The designated AD has the general permission to make remittances of instalments of principal, interest and other charges in conformity with ECB guidelines issued by Government / RBI from time to time.

xi) Procedure

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

xii) Empowered Committee

RBI has set up an Empowered Committee to consider proposals coming under the approval route.

C. 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) Borrowers are required to submit Form 83, in duplicate, certified by the Company Secretary (CS) or Chartered Accountant (CA) to the designated AD. One copy is to be forwarded by the designated AD to the Director, Balance of Payments Statistics Division, Department of Statistical Analysis and Computer Services (DESACS), Reserve Bank of India, Bandra-Kurla Complex, Mumbai – 400 051 for allotment of loan registration number.
- (c) The borrower can draw-down the loan only after obtaining the loan registration number from DESACS, RBI.
- (d) Borrowers are required to submit ECB-2 Return certified by the designated AD on monthly basis so as to reach DESACS, RBI within seven working days from the close of month to which it relates.

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 RBI website on a monthly basis with a lag of one month to which it relates.

2. Foreign Currency Convertible Bonds (FCCB)

The policy for ECB is also applicable to FCCB in all respects.

3. Structured Obligations

In order to enable corporates to raise resources domestically and hedge exchange rate risks, domestic rupee denominated structured obligations are permitted by the Government to be credit enhanced by international banks / international financial institutions/joint venture partners. Such applications would henceforth be considered by the Reserve Bank under the Approval Route.