



Foreign Exchange Management (Borrowing and Lending) Regulation, 2018 - Notification No. FEMA 3(R)/2018-RB

External Commercial Borrowings (ECB) Policy- Amendments

External Commercial Borrowings (ECBs) means borrowing by an eligible resident entity from outside India in accordance with framework decided by the Reserve Bank in consultation with the Government of India.

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') prescribing a regulatory regime for borrowing and lending transactions between persons resident in India and persons resident outside India.

Following are the key changes covered in the revised framework in connection with ECB:

Brief heading	Existing regulation	Revised regulation
Eligible Borrowers	Specific borrowers such as manufacturing sector, SIDBI, SEZ, NBFC, etc.	As against the specific classes mentioned in the existing framework, now all entities eligible to receive FDIs including start-ups (@) are included.
Minimum Average Maturity (MAM)	MAM was ranging between 1 to 10 years depending upon amount and borrower of ECB	Minimum average maturity will be 3 years irrespective of the amount or borrower of ECB.

Recognised Lenders	International banks, Export credit agencies, Foreign equity holders, etc.	<ul style="list-style-type: none"> • Resident of FATF (#) or IOSCO (##) • Multilateral and Regional Financial Institutions (where India is a member country) • Foreign branches / subsidiaries of Indian banks (only for ECBs raised in foreign exchange) • Others as specified by RBI in consultation with Government
End-uses	<p>The negative list for all Tracks would include the following:</p> <ul style="list-style-type: none"> • Investment in real estate or purchase of land except when used for affordable housing as defined in Harmonised Master List of Infrastructure Sub-sectors notified by Government of India, construction and development of SEZ and industrial parks/integrated townships. • Investment in capital market. • Equity investment. <p>Additionally for Tracks I and III, the following negative end uses will also apply except when raised from Direct and Indirect equity holders or from a Group company, and provided the loan is for a minimum average maturity of five years:</p> <ul style="list-style-type: none"> • Working capital purposes. • General corporate purposes. 	<p>The negative list for all Tracks would include the following:</p> <ul style="list-style-type: none"> • In the business of chit fund or Nidhi Company. • Investment in capital market including margin trading and derivatives. • Agricultural or plantation activities; • Real estate activity (*) or construction of farm houses; and • Trading in Transferrable Development Rights (TDR), where TDR shall have the meaning as assigned to it in the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2015.
Individual Limits of Borrowings	<p>The individual limits of ECB:</p> <p>a. Up to USD 750 million or equivalent for the companies in infrastructure and manufacturing sectors, etc</p> <p>b. Up to USD 200 million or equivalent for companies in software development sector;</p>	<ul style="list-style-type: none"> • All eligible borrowers/category of borrowers may raise ECB of up to USD 750 million or equivalent per financial year. • For Startups the amount would be limited to USD 3 million or equivalent per financial year. • However, Reserve Bank, in consultation with Government of India may prescribe higher limits for

	<p>c. Up to USD 100 million or equivalent for entities engaged in micro finance activities; and</p> <p>d. Up to USD 500 million or equivalent for remaining entities.</p>	ECBs raised by entities in certain sectors or for certain end uses.
Hedging Requirements	Eligible borrowers shall keep their ECB exposure hedged 100% at all times in case the average maturity is less than 5 years.	<ul style="list-style-type: none"> The mandatory hedge coverage is reduced from 100% to 70% for ECBs raised under Track I for a maturity period between 3 and 5 years. Further, it is also clarified that ECBs falling within the aforesaid scope but raised prior to the date of this circular i.e 26th November, 2018 will be required to mandatorily roll-over their existing hedge(s) only to the extent of 70 per cent of outstanding ECB exposure (as per A.P. (DIR Series) Circular No.15)
Available Routes	<ul style="list-style-type: none"> Foreign Currency Exchangeable Bonds (FCEBs) can be issued only under the approval route. All forms apart from FCEBs can be filed under automatic route (for ECB within prescribed limits). 	<p>All ECBs can be raised under the automatic route if it conforms to the parameters prescribed under this Schedule and subject to specified reporting conditions.</p> <p>All other cases will be considered by RBI under the approval route.</p>
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 	

All other provisions of the ECB policy shall remain unchanged.

(#) FATF: Financial Action Task Force

(##) IOSCO: International Organisation of Securities Commissions

(@) 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.

(*) "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.

Other important aspects:

Drawal of Loan:

Draw-downs of borrowing under ECB shall be made only after obtaining the loan registration number from the Reserve Bank or from the ADs, as per the system put in place by the Reserve Bank.

For non-adherence, the borrower may be required to pay penalty as specified by the Reserve Bank from time to time. Provided that non-payment of penalty as stated shall be treated as a contravention and shall be subject to compounding or adjudication.

Reporting:

The borrower shall adhere to the reporting procedure as specified by the Reserve Bank from time to time. For non-adherence, the borrower may be required to pay penalty as specified by the Reserve Bank from time to time. Provided that non-payment of penalty as above shall be treated as a contravention and shall be subject to compounding or adjudication.

