

FREQUENTLY ASKED QUESTIONS

External Commercial Borrowings (ECB) and Trade Credits

(Updated as on May 29, 2019)

PART I – EXTERNAL COMMERCIAL BORROWINGS

A. BASIC QUERIES

1. Where can one get the details of extant External Commercial Borrowings (ECB) and Trade Credits (TC) framework?

Master Direction No. 5 on 'External Commercial Borrowings, Trade Credits and Structured Obligations dated March 26, 2019 may be referred to for guidance on the extant framework on ECB and TC. ECBs and TCs raised under the prior frameworks should continue to be in compliance with the corresponding guidelines applicable at the time of availing the ECBs and TCs.

2. Do FCNR (B) loans given by AD Category I banks come under the ECB framework?

No, foreign currency loans given domestically by AD Category I banks out of the proceeds of FCNR (B) deposits do not come under the ECB framework.

3. What precautions have to be taken before raising loan from non-residents?

Borrowings from overseas have to be in compliance with the applicable ECB guidelines / provisions contained in the Foreign Exchange Management (Borrowing and Lending in Foreign Exchange) Regulations, 2018 issued vide Notification No. FEMA 3 (R)/2018-RB dated December 17, 2018, as amended from time to time.

4. Whose responsibility is it to ensure compliance with ECB guidelines?

The primary responsibility for ensuring that the borrowing is in compliance with the applicable ECB guidelines is that of the borrower concerned. Structures which bypass/ circumvent ECB guidelines in any manner and / or raising borrowings in any other manner which is not permitted / disguising borrowing under the wrap of other kind of transactions and / or contravening provisions of Foreign Exchange Management (Borrowing and Lending in Foreign Exchange) Regulations, 2018 would also invite penal action under FEMA.

B. ELIGIBILITY FOR RAISING ECB

5. Are LLPs eligible to raise ECBs?

As LLPs are not eligible to receive FDI, they cannot raise ECBs.

C. CURRENCY OF ECB

6. Can INR denominated ECB be converted into foreign currency ECB?

Any entity raising INR denominated ECB is not permitted to convert the liability arising out of INR ECB into foreign currency liability in any manner or assuming foreign currency risk in any manner by either entering into a derivative contract or otherwise.

D. RECOGNISED LENDERS/ INVESTORS

7. Is the minimum equity holding requirement of foreign equity holder (direct/indirect) applicable where the end uses is other than general corporate purpose/working capital/repayment of Rupee loans?

The foreign equity holders as defined at Paragraph 1.11 of the Master Direction No. 5 on 'External Commercial Borrowings, Trade Credits and Structured Obligations dated March 26, 2019 (MD) are eligible to lend for the end-uses given at Paragraph 2.1.viii(d), 2.1.viii(e) and 2.1.viii(f) of the MD. For end-uses, other than those in the negative list, recognised lenders are given at Paragraph 2.1.iv of the MD.

8. A foreign equity holder holding minimum 25% direct equity holding in the borrowing entity or minimum indirect equity holding of 51% in the borrowing entity is a recognised lender. Can the foreign equity holder dispose-off the holding once ECB is contracted?

No, all ECB guidelines including those related to minimum equity holding, are to be fulfilled during the whole tenure of the ECB and not only at the time of contracting of ECB.

9. Can Indian banks participate in the process of issuance of Rupee denominated bonds overseas in any other manner?

Indian banks cannot subscribe to RDBs issued overseas in primary market but can be arrangers/ underwriters/ market makers/ traders subject to compliance with prudential norms.

10. Can persons resident in India subscribe to bonds (foreign currency/INR) issued by eligible ECB borrowers in overseas centres or IFSCs as permitted in the ECB framework?

No. AD banks should ensure that persons resident in India do not have any exposure to borrowings by eligible entities under this framework either directly or indirectly except foreign branches/ subsidiaries of Indian banks abroad or any other permitted entities. Further, establishing borrowing structures/modalities which contravene the guidelines shall render themselves liable for penal action as prescribed under FEMA.

11. Individuals can be recognised lenders if they are foreign equity holders or for subscription to bonds/debentures listed abroad. Should such lenders also be from FATF/IOSCO compliant jurisdictions?

Yes.

E. AVERAGE MATURITY PERIOD

12. How is average maturity period calculated?

You may refer to https://rbidocs.rbi.org.in/rdocs/Content/PDFs/12EC160712_A6.pdf for illustration purposes.

13. Can door-to-door maturity be used in lieu of average maturity?

No.

14. In case of an ECB raised from foreign equity holder and utilized for general corporate purpose/working capital/repayment of Rupee loans, can repayment of principal of ECB start before the completion of 5 years?

Yes, however, the ECB should have minimum average maturity period of 5 years.

F. LEVERAGE CRITERIA AND BORROWING LIMIT

15. Should the proposed ECB be added to all outstanding ECBs for the purpose of ECB liability to equity ratio?

Yes, apart from ECB raised for refinancing where the proposed ECB amount may not be taken into account to avoid double counting.

16. Does the equity in “ECB liability to Equity ratio” include non-convertible preference capital?

No.

17. Should the proposed ECB be added to all outstanding ECBs for arriving at the individual limit for raising of ECBs?

The individual limit for raising ECB under the automatic route will take into account all ECBs raised in the financial year including the proposed one. However, refinancing of ECB amount will not be considered for arriving at individual limit per financial year. Also, the limit will be restored at the beginning of new financial year.

18. Is the debit balance in the profit and loss account for losses incurred by the Eligible Borrower, if any, required to be deducted from the free reserve while calculating the ECB liability-equity ratio?

Yes. Any debit balance in the profit and loss account as per the latest audited balance sheet of the Eligible Borrower should be deducted from the equity for computing the ECB liability-equity ratio.

19. Can an eligible borrower simultaneously raise both Foreign Currency and INR denominated ECBs?

Yes, as long as the ECBs are in compliance with the ECB guidelines for the respective currencies as per RBI guidelines. The individual limit will include all ECBs raised, whether in foreign currency or INR.

20. Is the enhancement of ECB amount permitted under the delegated powers?

Yes, provided the enhanced amount does not breach the applicable annual limit for the automatic route for the current financial year and the other parameters of the ECB are in compliance with the existing ECB guidelines also. Since this would be considered as change in terms for the same ECB, no separate LRN is required for the enhanced amount.

G. ALL-IN-COST

21. Does all-in-cost ceiling apply on a continuous basis or can it be calculated even on an average basis?

All-in-cost should be within the applicable ceiling at all times, e.g., breach of all-in-cost ceiling in the first year and a much lower all-in-cost in the second year so as to comply on an average, is not permitted.

22. Can interest during construction stage be paid out of ECB borrowings?

The definition of all-in-cost prohibiting use of ECB proceeds for payment of interest/charges is not applicable to ECBs raised for project finance and utilised for payment of guarantee fees (like ECA Premium) and interest during construction, provided the said components are part of project cost and capitalised by the borrower.

G. END-USES

23. Is the reimbursement of expenditure incurred in the past a permissible end-use under the ECB framework?

The reimbursement of expenditure incurred in the past is not a permissible end-use under the ECB framework.

24. Can ECB be availed of for making equity investment domestically or buying goodwill?

No. Equity investment either directly or indirectly (through purchase of goodwill) is not permitted.

25. Can ECB be availed of for making contribution in an LLP?

No, it is not permitted.

26. Can an eligible borrower raise fresh foreign currency ECB for repayment of existing Rupee denominated ECB?

Refinancing of Rupee denominated ECB with Foreign Currency denominated ECB is not permitted.

27. Can ECB proceeds be used by eligible resident borrowers for investment in their overseas JV/WOS as per the extant overseas investment guidelines?

Yes. ECB proceeds can be utilized for overseas investment as permitted under the overseas investment guidelines.

28. Is on-lending treated as working capital for borrowers who are engaged in the business of on-lending?

For the purpose of ECB, on-lending by borrowers who are engaged in the business of on-lending is not treated as working capital. Additionally, the borrowers shall need to adhere to the guidelines issued by the concerned sectoral or prudential regulator in this regard.

29. Can the housing finance companies raise ECB for on-lending to individual borrowers exclusively for flats/units in the affordable housing projects as defined in Harmonised Master List of Infrastructure Sub-sectors notified by Government of India?

Yes.

H. REFINANCING OF ECB

30. Can ECB raised under the earlier ECB framework be refinanced/ partially refinanced through an ECB raised under extant ECB framework?

Yes, provided that the borrower continues to be eligible to raise ECB under the extant ECB framework, all-in-cost is lower than the all-in-cost of existing ECB, residual maturity is not reduced and the new ECB is in compliance with the extant ECB framework as well.

31. Can refinancing/ partial refinancing be undertaken under auto route even for ECBs raised under approval route, subject to compliance with guidelines?

Yes.

32. Is refinancing of ECBs raised from foreign equity holders and utilised for working capital/ general corporate purpose/ repayment of Rupee loans permitted?

Yes. However, the new ECB lenders should also be foreign equity holders as defined in the ECB framework and subject to applicable refinancing guidelines.

I. HEDGING UNDER ECB FRAMEWORK

33. Can an entity raising INR ECB including issuance of Rupee denominated bonds overseas, assume foreign currency risk on account of liabilities arising out of such ECBs?

Any entity raising INR ECB (including issuance of Rupee denominated bonds overseas) is not permitted to convert the liability arising out of such ECBs into a foreign currency liability in any manner or assume foreign currency risk in any manner by either entering into a derivative contract or otherwise.

34. Can the existing hedge(s) for ECBs be rolled over to the extent of 100 per cent of outstanding ECB exposure?

Yes. The prescription is that of a minimum mandatory hedge.

35. What are the permitted derivative products for hedging of ECB?

Users may refer to Master Direction on Risk Management and Inter-bank dealings dated July 5, 2016, as amended from time to time.

J. Reporting

36. What precautions have to be taken at the time of filing of Form ECB in respect of an ECB?

Any draw-down in respect of an ECB should happen only after obtaining the Loan Registration Number (LRN) from RBI by filing duly certified Form ECB to the Director, External Commercial Borrowings Division, Department of Statistics and Information Management (DSIM), Reserve Bank of India, Bandra-Kurla Complex, Mumbai – 400 051. It should be ensured that all terms and conditions of the ECB are reported correctly in Form ECB and none of the columns are left blank (such columns which are not applicable for the borrowing or against which 'nil' information has to be given, should be suitably covered). Changes in ECB parameters, whether under the automatic route with the approval of Authorised Dealer Category –I banks or under the approval route with prior approval of the RBI, should also be reported to the DSIM through revised Form ECB at the earliest, in any case not later than 7 days from the changes effected. While submitting revised Form ECB, the changes should be specifically mentioned in the communication. Any failure to comply with reporting guidelines in respect of Form ECB for an ECB may invite penal action under FEMA.

37. How are actual transactions of an ECB reported to RBI?

The borrowers are required to report actual ECB transactions, correctly and fully, through duly certified Form ECB 2 through the Authorised Dealer Category-I bank to DSIM as per the periodicity specified by the RBI. None of the columns in Form ECB 2 should be left blank (such columns which are not applicable for the borrowing or against which 'nil' information has to be given, should be suitably covered). The Form ECB 2 should 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 suitably. Any failure to comply with reporting guidelines in respect of Form ECB 2, including failure to adhere to periodicity of reporting, may invite penal action under FEMA.

38. In light of the New ECB framework, does the borrower need to file revised Form ECB?

No, in case no changes are made in terms and conditions of ECB, there is no need to file revised Form ECB (erstwhile Form 83).

39. Is LSF applicable to old ECB 2 returns also?

No. LSF provisions will be applicable to ECB 2 returns submitted from February 2019 onwards i.e. Form ECB 2 submitted in the month of February for transactions conducted in the month of January 2019.

40. Is LSF applicable for each Form ECB 2 and to nil returns as well?

Yes. LSF is applicable for non-submission of each Form ECB 2, including Nil returns.

K. MISCELLANEOUS

41. Can the interest accrued on ECB be converted into Equity under the extant norms?

Yes. Extant norms permit both ECB principal and interest to be converted into equity subject to applicable conditions as given under Paragraph 7.4 of the Master Direction No. 5 on 'External Commercial Borrowings, Trade Credits and Structured Obligations dated March 26, 2019.

42. When ECB is partially converted into equity, should the remaining ECB amount comply with all the ECB guidelines?

Yes. The part conversion of ECB into equity will be freely permitted only when the part amount remaining as ECB complies with all the applicable ECB norms.

43. Can fixed deposits created out of ECB proceeds, pending utilization, be renewed after completion of maximum permitted period?

No.

PART II: TRADE CREDITS (TC)

44. Can SBLC be issued by AD banks on behalf of their customers for availing short term trade finance from overseas lenders in foreign currency?

AD banks can issue SBLC on behalf of their customers for availing short term trade credit from overseas lenders in foreign currency subject to such SBLCs complying with the provisions contained in Department of Banking Regulation Master Circular No. DBR. No. Dir. BC.11/13.03.00/2015-16 dated July 1, 2015 on "Guarantees and Co-acceptances", as amended from time to time.

45. As per the new guidelines AD banks are required to report permissions granted for settlement of delayed import dues as per the applicable procedure. AD banks are also required to report permissions granted for settlement of delayed import dues by Regional offices of Reserve Bank on a similar basis. Is the mandated reporting only for approvals accorded for extensions up to one year/three years for non-capital/capital goods respectively?

AD banks are required to report all permissions granted by the AD banks/Regional offices of Reserve Bank for settlement of delayed import dues irrespective of the tenures of extension sought.